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Briefing on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SAN FRANCISCO, CA

WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1–800–726–4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
RESERVATIONS: Federal Information Center, 1–800–726–4995

Contents

Federal Register

Vol. 57, No. 132

Thursday, July 9, 1992

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
946.....30379
948.....30380
980.....30380
981.....30382
Proposed Rules:
400.....30430

9 CFR
Proposed Rules:
160.....30432
161.....30432
162.....30432

10 CFR
50.....30383

12 CFR
225.....30387
Proposed Rules:
333.....30433
362.....30435

13 CFR
101.....30391

14 CFR
39 (3 documents).....30392–30534

21 CFR
Proposed Rules:
356.....30534

24 CFR
201.....30394

25 CFR
Proposed Rules:
571.....30384
573.....30384
575.....30384
577.....30384

26 CFR
Proposed Rules:
1.....30451

28 CFR
0.....30395
44.....30397

29 CFR
1425.....30397

33 CFR
100.....30403
117.....30403
165.....30405
Proposed Rules:
117.....30451

40 CFR
Proposed Rules:
180.....30454
300.....30452

42 CFR
60.....30534

44 CFR
Proposed Rules:
362.....30455

45 CFR
201.....30407
204.....30407
205.....30407
232.....30407
233.....30407
301.....30407
1355.....30407

47 CFR
Proposed Rules:
97.....30456

49 CFR
107.....30620
171.....30620
214.....30429
245.....30596

50 CFR
Proposed Rules:
14.....30457
603.....30458
663.....30534

Rules and Regulations

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV-92-038IFR]

Irish Potatoes Grown in Washington; Changes to the Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on revisions to the minimum size requirements for potatoes grown in Washington. This action: (1) Reduces the minimum size from 1⅞ inch to 1-inch in diameter for round and long white types of potatoes; (2) specifies new container sizes (three pounds or less net weight) for all types and sizes of potatoes; and (3) categorizes potatoes in the handling regulations under the marketing order by skin-color, flesh-color or type rather than by varietal type. The State of Washington Potato Committee (Committee) unanimously recommended the revisions at its February 6, 1992, meeting to provide producers and handlers an opportunity to supply a growing market for smaller-sized potatoes packed in specialty consumer containers and standard commercial containers, and to clarify the handling regulations so they will be consistent with inspection certification procedures.

EFFECTIVE DATE: July 2, 1992. Comments received by August 10, 1992, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 450 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Washington potatoes may be classified as small entities.

The Committee's recommended revisions are authorized pursuant to § 946.51 and § 946.52 of the marketing order.

The first revision (§ 946.336(a)(2)(i)) reduces the minimum size from 1⅞ inch to 1-inch in diameter for round and long white types of potatoes. Currently, the regulations provide only for a 1-inch diameter minimum size for round red and yellow-fleshed potato types, if such potatoes meet or exceed U.S. No. 1 grade requirements. The Committee recommended 1-inch diameter round and long white types also be required to meet U.S. No. 1 grade. U.S. No. 1 grade consists of potatoes which are similar in varietal characteristics, firm, fairly clean, fairly well-shaped, and free from damage.

Potato buyers have indicated that there is a growing consumer demand for small round and long white types which are referred to as "gourmet" potatoes. The Committee indicated that this action will allow handlers to satisfy the consumer demand for such small "gourmet" type potatoes. These potatoes are used in restaurants and sold in grocery stores.

The second revision (§ 946.336(a)(2)(iii)) allows handlers to pack any type or size of potato, in

containers containing a net weight of 3 pounds or less, if those potatoes are U.S. No. 1 grade or better. This revision allows handlers to pack all smaller-sized types of potatoes into specialty consumer containers to supply the growing market for smaller-sized potatoes packed in such containers. A handler who wishes to pack smaller-sized potatoes may accumulate, over a period of time, such potatoes in bulk containers to be packed later or packed at another facility. These potatoes will be required to meet the U.S. No. 1 grade requirements at the time of packaging.

Growers will benefit because these smaller potatoes are usually culled out, sent to the dehydrator, used for cattle feed, or not harvested at all. This rule will allow growers to market more of their crop and provide a greater range of potato sizes to give consumers more choices. Producers usually receive better returns when their crop is sold for fresh use because potatoes disposed of to dehydrators or used for cattle feed generally yield lower returns.

The third revision categorizes potatoes in the handling regulations under the marketing order by skin-color, flesh-color or type rather than by varietal type. Currently, the handling regulations specify requirements for varietal types of potatoes. For example, § 946.336(b)(2) specifies minimum maturity requirements for Norgolds, Burbanks, and White Rose potato varieties. These varieties are all referred to as white or Russet types of potatoes. The Committee indicated that the Federal-State inspection service inspects potatoes and certifies according to type (i.e., round red, round and long whites, yellow-fleshed, and Russet) rather than to specific varietal types of potatoes. Therefore, the Committee recommended that varietal types of potatoes mentioned in the handling regulations be deleted and that the skin-color, flesh-color or type of potato be specified instead. This revision will clarify the handling regulations so that they will be consistent with inspection and certification procedures.

In a separate action, the import regulation will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less during the months the potato import regulation is based on Washington marketing order requirements, if the potatoes are U.S. No. 1 grade or better. Such a change to the import regulation is required under section 8e of the Act. Section 8e requires imported potatoes meet the same or comparable requirements as established under the domestic marketing order with which the imports most directly compete.

In addition, § 946.336(i) will be removed from the handling regulations. That paragraph states the same information that is contained in § 980.1 of the import regulations. Since the same information applicable to imported potatoes is contained in the import regulations, paragraph (i) in the domestic handling regulations should be deleted to eliminate duplication or confusion.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented and the Committee's recommendation, it is found that the revisions to the handling regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers of Washington potatoes and provides additional marketing opportunities by allowing handlers to supply the growing market for smaller-sized potatoes; (2) this action will allow a larger portion of grower deliveries to be packed and sold for fresh use and provide a greater range of potato sizes to give consumers more choices; (3) the action for Washington potatoes was discussed at a public meeting and is fully supported by the industry; (4) the new crop year begins on July 1, 1992, and handlers need time to prepare their packing facilities if they wish to package smaller-sized potatoes; and (5) this action provides a 30-day comment period and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii), redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iv), adding a new paragraph (a)(2)(iii), revising paragraphs (b)(1) and (b)(2), and removing paragraph (i) to read as follows:

[Note: This section will be published in the annual Code of Federal Regulations].

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(1) * * *

(2) *Size:* (i) All red, yellow fleshed, and white types may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

(ii) All Russet types must be 2⅛ inches (54.0 mm) minimum diameter or 4 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season.

(iii) Any type of any size may be packed in a 3 pound or less container if the potatoes are U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances* * * *

* * * * *

(b) *Minimum maturity requirements.*

(1) *Red, yellow fleshed and white types:* Not more than "moderately skinned."

(2) *Russet types:* Not more than "slightly skinned."

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16062 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 948 and 980

[Docket No. FV–92–068IFR]

Colorado Potatoes and Potatoes Imported Into the United States; Change to the Import Size Requirements and Conforming Change to the Colorado Potato Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on exempting red-skinned round type potatoes meeting U.S. No. 1 or better grade requirements that are imported in containers containing 3 pounds or less during the months of July through September from minimum size requirements. This relaxation is based on a recent action taken under the Washington potato marketing order and is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action also removes from the Colorado potato handling regulations provisions regarding potato import regulations. This action should benefit potato importers and consumers. There is a growing market for smaller-sized potatoes.

EFFECTIVE DATE: July 2, 1992. Comments received by August 10, 1992, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including red-skinned potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like potatoes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less that $500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than $3,500,000. Currently, there are about 30 importers of all types of potatoes. The majority of potato importers may be classified as small entities.

The revision to the import regulation (section 980.1) is being initiated by the Department because section 8e of the Act requires imported potatoes to meet the same or comparable requirements as those established under a domestic marketing order. The Act also provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Currently, section 980.1 of the import regulations provides that during the months of July and August the grade, size, quality, and maturity requirements pursuant to the Washington potato marketing order (7 CFR part 946) shall apply to all imported red-skinned round types of potatoes. A recent review of shipment data indicates that the Washington potato industry, rather than the Colorado potato industry, is typically the dominant shipper of potatoes during the month of September. Thus, the grade, size, quality and maturity requirements pursuant to the Washington potato marketing order shall apply to all imported red-skinned, round types of potatoes from July through September. The requirements under the Colorado potato marketing order will apply during the months of October through the following June. Under the Washington potato marketing order, the recommended revisions will allow handlers to pack any type or size of potato in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No. 1 grade or better. Thus, the import regulations will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less. Also, these potatoes must be U.S. No. 1 grade or better. U.S. No. 1 grade consists of potatoes which are similar in varietal characteristics, firm, fairly clean, fairly well-shaped, and free from damage.

In addition, paragraph (h) of section 948.386 is removed from the handling regulations for Colorado potatoes. That paragraph contains the same information that is contained in section 980.1 of the import regulations. Because the same information applicable to imported potatoes is contained in the import regulations, paragraph (h) in the Colorado potato regulations is being removed to eliminate duplication and prevent confusion.

This size requirement exemption brings the import regulations into conformity with the requirements applied under the Washington potato marketing order (7 CFR part 946). The United States Trade Representative has been given an opportunity to review the change in the import regulation and concurs with its issuance.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is found that the revisions to the import regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective

date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on importers by eliminating the size requirement for certain red-skinned round type of potatoes imported in containers containing 3 pounds or less; (2) section 8e of the Act requires import requirements for potatoes to be in conformity with the requirements of the marketing order with which imports most directly compete; (3) this action will allow importers to supply a growing market for smaller-sized potatoes; and (4) this action provides for a 30-day comment period and all comments timely received will be considered prior to the finalization of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR Parts 948 and 980 are amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 948.386 [Amended]

2. Section 948.386 is amended by removing paragraph (h).

PART 980—VEGETABLES; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

4. Section 980.1 is amended by revising paragraphs (a)(2)(i) and (b)(1) to read as follows:

[*Note: This section will be published in the annual Code of Federal Regulations*].

§ 980.1 Import regulations; Irish potatoes.

(a) * * *

(2) * * *

(i) Imports of red-skinned, round type potatoes during the months of October through the following June are in most direct competition with the marketing of the same type potatoes produced in Area 2, Colorado (San Luis Valley) covered by Order No. 948, as amended (part 948 of this chapter); and during the months of July through September, the marketing of the same type of potatoes is in most direct competition with the same type as produced in the area covered by Order No. 946 (part 946 of this chapter).

* * * * *

(b) * * *

(1) For the period October 1 through the following June of each marketing year, the grade, size, quality, and maturity requirements of Area No. 2, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter) applicable to potatoes of the red-skinned round type; and from July 1 through September 30 each marketing year the grade, size, quality, and maturity requirements of Marketing Order No. 946 (part 946 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imported red-skinned round type potatoes, except there shall be no size requirements for imported red-skinned round type of potatoes that are imported in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No.1 grade or better.

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16061 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 981

[FV–91–462FR]

Almonds Grown in California; Changes to Administrative Rules and Regulations Concerning Eligible Charitable Outlets for Disposition of California Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a definition of "charitable outlet" in the administrative rules and regulations issued under the Federal marketing order for California almonds. Under certain conditions, handlers may receive credit against their assessments for distributing sample packets of almonds to charitable outlets. This change will clarify the meaning of a "charitable outlet" for purposes of the creditable advertising program implemented under the order. The action was recommended by the Almond Board of California (Board), which is responsible for local administration of the order.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action amends § 981.441 of Subpart—Administrative Rules and Regulations. Section 981.41 of the order provides authority for crediting a handler's direct expenditures for advertising against such handler's assessment obligation. Section 981.441(d)(1)(i) of the rules and regulations allows handlers credit for distributing generic packages of almonds to charitable or educational outlets. Handlers must file claims with the Board in order to receive credit for the distribution of such sample packages.

Heretofore, there has been no published definitions of "charitable outlet". In the past, Board policy has been to use those charitable organizations described in the Internal Revenue Code (IRC), section 170(c) as a guideline in evaluating advertising claims. Such organizations are those to which contributions are tax deductible. They are listed in the Internal Revenue Service Publication No. 78.

At its December 5, 1991, meeting the Board recommended amending § 981.441 of the Administrative Rules and Regulations to specify that charitable outlets for which handlers may receive credit for distributing generic almond packets must be those charities described in the IRC. This action will clarify the definition of "charitable outlet" contained in § 981.441(d)(1)(i) of the marketing order regulations. This action will not impose any additional economic, regulatory, or recordkeeping burden on handlers.

This final rule is based on a recommendation of the Board, a comment received in response to a proposed rule on this matter, and upon other available information. The Department has decided that the criteria contained in section 170(c) of the IRC are appropriate to establish the definition of "charitable outlet" in the marketing order regulations. The IRC is widely known and establishes the most important requirements for charitable organizations to meet. Under this final rule, charitable outlets would include (1) a state or possession of the United States if the gift is made for public purposes; (2) certain corporations, trusts, community chests, funds, and foundations which are organized and operated exclusively for religious, charitable, scientific, literary, educational or other listed purposes; (3) certain posts or organizations of war veterans; (4) certain domestic fraternal societies, orders, and associations operating under a lodge system, and; (5) certain cemeteries and burial societies. The IRS publication No. 78 lists over 350,000 organizations which have been determined to qualify for tax-deductible contributions under this definition.

The proposed rule was published in the **Federal Register** on January 27, 1992 (57 FR 3032). Interested persons were invited to submit comments on the proposal until February 26, 1992. One comment was received from an independent handler opposing the regulation. The commenter stated that handlers should be able to distribute almonds to any outlet that the handler believes is needy, regardless of whether the organization is registered with the Internal Revenue Service. The commenter also stated that a handler will not receive the recognition and goodwill if its charity contributions are distributed only among larger organizations that are described in the IRC. The Department believes that the description of the types of organizations in the IRC is broad enough to provide handlers with a large number of organizations to which they can make charitable donations. Handlers will not be restricted to donating to larger charities.

The commenter also requested that the proposal be effective for future disposition of charitable packets and not be applied retroactively. This action is a regulatory promulgation of a Board policy that has been followed for the past several years, and does not change that policy. Thus, this comment is denied.

The Department has made a non-substantive revision to the text of the proposed rule to clarify the definition of "charitable outlet."

After consideration of all relevant matters presented, the Board recommendation, the comment received, and other available information, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.441(d)(1)(i) is amended by revising the first sentence and adding a new sentence after the revised first sentence to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) For the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets. For the purposes of this section, the term "charitable outlet" means an organization to which a charitable contribution as defined in Section 170(c) of the Internal Revenue Code (26 U.S.C. Section 170(c)) may be made. * * *

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16060 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD89

Decommissioning Funding for Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on the timing of the collection of funds for decommissioning for those nuclear power reactors that have shut down before the expected ends of their operating lives. These amendments require that the NRC evaluate decommissioning funding plans for power reactors that shut down

prematurely on a case-by-case basis. The NRC's evaluation would take into account the specific safety and financial situations at each nuclear power plant.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1988 (53 FR 24018), the NRC published a final rule that amended 10 CFR parts 30, 40, 50, 51, 70, and 72. This final rule established several acceptable methods by which power reactor licensees may provide assurance that they will have sufficient funds to decommission their plants by the time the plants are permanently shut down (53 FR 24043). In considering this final rule, the Commission acknowledged that, in certain instances, reactors might be permanently shut down before completing the full term of their operating lives. However, because the Commission determined that such instances would be infrequent, it did not explicitly include remedies for this situation in the final rule.

In establishing the June 27, 1988, final rule, the Commission recognized that power reactor licensees generally have access to significant amounts of financial capital and are closely regulated. Therefore, the Commission allowed these licensees the option of accumulating decommissioning funds over the projected operating life of the facility rather than requiring that these funds be available or guaranteed prior to operation, or at some time before the end of the projected operating life of the facility. The Commission recognized the risk that, if some reactors did not operate for their entire operating lives, those licensees might have insufficient decommissioning funds at the time of permanent shutdown.

After the NRC published the June 27, 1988, final rule, four power reactor facilities shut down prematurely: The Fort St. Vrain Nuclear Generating Station, the Yankee Rowe Nuclear Power Station, the Rancho Seco Nuclear Generating Station, and the Shoreham Nuclear Power Station. The NRC staff sought the Commission's guidance on the appropriate period for collecting funds to compensate for any shortfall of decommissioning funds for plants such as these that shut down prematurely. The Commission elected to determine the appropriate collection period for any decommissioning funding shortfall for prematurely shut down power reactors on a case-by-case basis. As part of its decision, the Commission directed the NRC staff to prepare a rulemaking that would codify this case-by-case approach. A proposed rule implementing this approach was published in the **Federal Register** on August 21, 1991 (56 FR 41493).

Analysis of and Response to Comments

The NRC received 17 comments in response to the proposed rule. Eleven comments were from NRC-licensed electric utilities; two from utility trade groups; one from a utility counsel; two from bond rating/investment advisory companies; and one from a public interest group.

Except for the comment from the public interest group, all comments supported that part of the proposed rule that would allow the period of funds accumulation for a prematurely shut down reactor to be determined on a case-by-case basis. However, most utilities and their representatives opposed the guidance in the preamble to the proposed rule that would use a bond rating of "A" as a criterion for determining the future solvency of and thus the extent of the funding period for a licensee with a prematurely shut down power reactor.

1. Comment: The use of bond ratings.

The commenters offered a variety of reasons why they considered bond ratings, particularly at the "A" level, to be inappropriate for judging a licensee's ability to pay for decommissioning for a prematurely shut down reactor. These reasons included the following:

(1) Bond ratings are too restrictive and do not allow for variations in licensees situations as contemplated by the case-by-case approach.

(2) Bond rating may not be an accurate indicator of a licensee's future ability to pay for decommissioning.

(3) Not all licensees issue debt that is rated. In the case of poser plants with several owners, owners will likely have different ratings.

(4) Bond ratings would likely decline by virtue of a premature reactor shutdown, thus precipitating further financial problems and further downratings.

(5) Differences in ratings by different services or for different classes of debt issues were not addressed.

(6) Reliance on bond ratings may result in unsound business decisions to avoid accelerated fund accumulation or may discourage use of the SAFSTOR decommissioning option.

(7) A "BBB" rating, or equivalent, is still considered investment grade and is used as a criterion in Regulatory Guide 1.159 [1] and Appendix A to 10 CFR part 30.

(8) A one-year trigger period is too short and may be disruptive.

(9) Possible adverse tax consequences may accrue if accelerated payments are required.

Response: The NRC continues to believe that bond ratings can serve as one of several criteria to estimate the ability of a licensee to pay future decommissioning costs. The NRC did not intend that this rule set a mandatory requirement that a minimum "A" rating must be met before the NRC would approve funding into a shut down reactor's safe storage period. Rather, one reason the "A" rating criterion was proposed was to serve as a screening test of whether additional financial data was required to determine whether the licensee should be allowed to fund decommissioning into a storage period. If a licensee met this criterion, the licensee would not have to prepare and submit additional documentation of its financial situation to be allowed to fund decommissioning into a storage period. A benefit of the proposed screening test was a potential saving of licensee and NRC resources to develop and review the additional financial data.

With respect to the level of rating (i.e., "A" vs "BBB" or equivalent), the preamble to the proposed rule presented a rating of "A" as a threshold below which a licensee would be required, if other criteria were not met, to accelerate payment of any decommissioning funding shortfall. The staff chose an "A" rating because a downrating from "A" to "BBB" would allow a licensee to secure funds or meet other criteria while its rating was still investment grade. To that extent, an "A" rating is not inconsistent with the use of "BBB" ratings in Regulatory Guide 1.159 and appendix A to 10 CFR part 30. In Regulatory Guide 1.159, a "BBB" bond rating was used as a minimum suggested standard for a mixed portfolio of investments in a decommissioning trust. Because of investment diversification, a "BBB" investment standard represents a

[1] Regulatory Guide 1.159 is available for inspection and copying for a fee at the Commission's Public Document Room 2120 L Street, N.W., (Lower Level), Washington, D.C. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5825 Port Royal Road, Springfield, VA 22161.

relatively low level of financial risk. Similarly, appendix A of part 30 used a "BBB" rating as a minimum for a parent company of a licensee to guarantee decommissioning costs. Because a parent company is a separate legal entity from its subsidiary, the NRC would potentially have access to two sources of funds (the licensee and its parent) thus reducing the risk of decommissioning funding shortfalls. For this reason, the NRC disagrees that an "A" bond rating standard is too stringent as a screening test.

For these reasons, the NRC will continue to use the "A" bond rating as a screening test for determining the decommissioning funding period for prematurely shut down power reactors. If a power reactor licensee cannot pass the initial screening test, or if it has passed the screening test but subsequently loses its "A" bond rating, this licensee could still be allowed to fund into the storage period by meeting other criteria as described below.

These criteria include:

(1) A licensee's financial history including its past funding of reactor safety expenditures;

(2) The local rate regulatory environment and other relevant State laws including public utility commission (PUC) commitments;

(3) The number of other generating plants, both nuclear and non-nuclear, in its system. This is another way of measuring the relative impact of decommissioning costs on a particular licensee's finances; and

(4) Other factors that a licensee can demonstrate as being relevant.

The NRC wishes to clarify that it assumes that most licensees with "BBB" bond ratings would still be able to obtain NRC approval of decommissioning funding into the safe storage period for a prematurely shut down reactor. This is because most licensees will be able to successfully meet the other criteria described above even if they are unable to pass the "A" bond rating screening test. Recent exemptions issued to two prematurely shut down plants (Rancho Seco and Shoreham) indicate that bond ratings are only one of several factors that the NRC will use to determine whether a licensee has demonstrated reasonable assurance of its ability to pay decommissioning costs. Finally, this discussion on the use of bond ratings is intended as non-binding guidance only; this final rule includes no such detailed criteria.

2. Comment: It is not necessary to require that all funds should be available in external funds or guaranteed by the time final dismantlement activities commence.

A few commenters disagreed with the NRC's statement that all funds are required to be available or guaranteed in external funds by the time final dismantlement activities commence. Some commenters hypothesized scenarios in which relatively small funding shortfalls may be covered in rates already approved by a licensee's PUC or the Federal Energy Regulatory Commission (FERC) prior to actual collection. In this situation, funds, although not strictly available at the time final dismantlement activities commence, would have a high degree of assurance of being obtained by the time the licensee needed to complete the dismantlement activities. Another commenter suggested that the NRC's requirement of full funding prior to the start of final dismantlement operations is inconsistent with a case-by-case approach. This commenter recommends that licensees be required to provide assurance that funds are available to complete specific dismantlement activities, rather than the entire dismantlement process.

Response: The NRC disagrees with recommendations that the NRC should abandon its general policy of requiring all funds needed for decommissioning be available prior to the start of final dismantlement. As described in the proposed rule (56 FR 41493), the June 27, 1988, final rule clearly requires funds at the time of permanent end of operations. Section 50.75(e)(1) defines the three methods of financial assurance acceptable for power reactor licensees. Two of the methods, prepayment and surety or insurance, provide all funds by the time of permanent shutdown. The third acceptable method, an external sinking fund, is defined as "a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected."

This requirement was imposed to avoid a situation where lack of funds could delay and degrade the decommissioning process to the detriment of public health and safety. Although the dismantlement process can be completed in discrete stages, the potential unavailability of funds at a later stage may conceivably affect the dismantlement process at an earlier stage by creating incentives to "cut corners." Thus, this requirement was not altered in the proposed rule on funding for plants that shut down prematurely and will remain in the final rule.

3. Comment: Accelerated funding when there is a risk of premature shutdown.

One commenter asked the NRC to allow accelerated funding in cases where there is a risk of premature shutdown. This commenter specifically referred to its request for FERC to accelerate funding over a shorter period than the fill remaining operating life so that adequate funds would be available at the time of permanent shutdown. The commenter also indicated that its request was denied by FERC.

Response: The NRC strongly supports any effort by its licensees to accelerate funding, especially when a serious possibility of premature shutdown is anticipated. The NRC further believes that existing regulations (i.e., 10 CFR 50.75(e)) would allow accelerated funding and that, in appropriate circumstances, accelerated funding could be ordered if necessary of desirable for safety. In any case, the NRC would defer to FERC or the appropriate PUC for the appropriate rate treatment of accelerated funding.

4. Comment: Amending 10 CFR 50.82 to clarify issuance of possession-only licenses and other procedural aspects of decommissioning.

One commenter recommended that § 50.82 be amended to indicate the timing and procedures for decommissioning. The commenter requests that the NRC specify when it will issue a possession-only license or other license amendments to permits scaling back site operations.

Response: The NRC is evaluating its regulations concerning decommissioning and is considering issuing proposed amendments to clarify its procedures in the areas suggested by the commenter. To expedite this rule, however, the NRC will consider the timing of possession-only licenses and other license amendment procedures as part of a separate rulemaking action.

5. Comment: The case-by-case approach "fails to provide sufficient protection to the public's health and safety."

A commenter argues that many plants will shut down prematurely in the future and safe storage is neither risk free nor cheap. Thus, adequate funds for safe storage must be assured, in addition to funds for actual decommissioning. Therefore, plants must have adequate funding available for the time of

shutdown and not be allowed to fund into the safe storage period. Further, this commenter asserts that "A" bond ratings are inadequate because "in many instances, utility (and other) bonds have gone from investment grade status to junk or default status in one step." In the event of a precipitating incident such as an accident, "there is no likelihood at all that the derating process will be gradual * * *." This commenter concludes by stating that the NRC "should determine how to insure, in each and every case, that adequate funds are available."

Response: This commenter makes several assertions to support the commenter's opposition to funding during a safe storage period. These assertions, however, are not supported by facts. It is not true that most bond ratings, especially for electric utilities, move quickly through several categories of ratings. The process is almost always gradual and, therefore, would almost always give the NRC time to take steps to assure the adequacy of fundings during a storage period. In addition, this commenter also ignores NRC's requirement that its power reactor licensees carry accident recovery insurance of at least $1.06 billion (10 CFR 50.54(w)) to provide a source of funds for accident cleanup and decontamination. This requirement reduces the likelihood that premature decommissioning resulting from an accident would be particularly financially stressful.

More importantly, the NRC would, as stated, evaluate each instance of premature decommissioning on a case-by-case basis. The criteria discussed above provides the NRC with a variety of measures to assure the adequacy of funding. The case-by-case approach that is being adopted in this rule allows the NRC to consider the participation financial situation for each licensee that shuts down its power reactor before the expected end of operation life. In spite of the commenter's assertions, the Commission does not expect this to be a frequent occurrence. When it does occur, in most situations the majority of decommissioning funds will have been collected during the operating life of the shut down reactor. Most licensees currently have substantial amounts collected and would, at the least, be able to fund activities necessary to place a shut down reactor into safe storage. Whatever funding shortfall remains can be collected or guaranteed in a time frame and through funding mechanisms commensurate with a licensee's financial situation. As that financial situation changes, the licensee, under NRC monitoring, would alter funding methods accordingly.

For the reasons presented in the discussion of issues raised, the NRC is issuing this final rule as proposed.

Finding of No Significant Environmental Impact: Availability

This final rule clarifies decommissioning funding arrangements for those licensees whose power reactors are shut down prematurely. This action is required so that the Commission may evaluate on a case-by-case basis the unique financial situation that could confront those licensees. The Commission would continue its requirements for assurance of decommissioning costs but could alter the timing of funds collection according to a licensee's individual financial situation. The Commission believes that if utility licensees were required to have all funds for decommissioning by the time of permanent shutdown as required by the existing rule, some utilities could be unnecessarily financially stressed without significantly increasing the protection of the public health and safety and of the environment.

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Although changes in the timing of collection of funds for decommissioning prematurely shut down power reactors may affect the financial arrangements of licensees and may have economic and social consequences, they would not alter the effect on the environment of the licensed activities considered in the final rule published on June 27, 1988 (53 FR 24018) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[2] The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this final rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Regulatory Analysis

On June 27, 1988 (53 FR 24018), the NRC published in the **Federal Register** a final rule amending 10 CFR parts 30, 40, 50, 51, 70 and 72 regarding general requirements for decommissioning nuclear facilities. In that rule, the Commission provided the option that power reactor licensees may collect funds for decommissioning over the projected operating life of the facility but required that all funds needed for decommissioning be accumulated by the time of permanent shutdown. Under the existing rule, power reactor licensees that shut down prematurely would not have the remaining term of the operating license to accumulate decommissioning funds and could be unduly burdened financially if required to raise all remaining decommissioning funds shortly after shutdown. Consequently, the NRC will evaluate the schedule for collecting decommissioning funds for prematurely shut down facilities on a case-by-case basis. A case-by-case approach allows the NRC to evaluate the particular financial circumstances of each affected licensee while continuing to ensure that the public health and safety and the environment are adequately protected. This final rule would generally reduce financial costs for those licensees allowed to extend the collection period of decommissioning funds.

This final rule would not create substantial costs for other licensees. The rule will not signficantly affect state and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final

[2] Copies of NUREG–0586 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 118 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 68 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 995 (42 U.S.C. 2237).

For the purposes of sec. 223, 66 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i),(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a),(c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.82 is amended by revising paragraph (a) to read as follows:

§ 50.82 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission its facility. For a facility that permanently ceases operation after July 27, 1988, this application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan. For a facility which has permanently ceased operation prior to July 27, 1988, requirements for contents of the decommissioning plan as specified in paragraphs (b) through (d) of this section may be modified with approval of the Commission to reflect the fact that the decommissioning process has been initiated previously. For a facility which has permanently ceased operation before the expiration of its operating license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

* * * * *

Dated at Rockville, Maryland this 26th day of June, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–16133 Filed 7–8–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0698]

RIN 7100-AB13

Bank Holding Companies and Change in Bank Control Investment Advisory Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising its interpretive rule regarding investment advisory activities of bank holding companies to provide expressly that a bank holding company or its nonbank subsidiary may act as an agent for customers in the brokerage of shares of an investment company advised by the holding company or any of its subsidiaries. In addition, the revision will provide that a bank holding company or its nonbank subsidiary may provide investment advice to customers regarding the purchase or sale of shares of an investment company advised by a holding company affiliate. In both instances, the Board requires certain disclosures to be made to address potential conflicts of interests or adverse effects.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division; or Robert S. Plotkin, Assistant Director (202/452-2782), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

In 1971, the U.S. Supreme Court held that the operation of a mutual fund by a national bank was prohibited by the Glass-Steagall Act because it involved the bank in prohibited securities underwriting and distributing activities.[1] Subsequent to the Court's decision, the Board amended its Regulation Y to permit a bank holding company to furnish investment advice to an open-end investment company (*i.e.*, a mutual

[1] *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971).

fund) and to sponsor, organize, and advise closed-end investment companies. Concurrently the Board adopted an interpretive rule outlining the types of relationships the Board believed a bank holding company may have with a mutual fund and a closed-end investment company consistent with the Glass-Steagall Act. This interpretive rule (12 CFR 225.125) governs the manner in which a bank holding company that has obtained Board approval under section 4(c)(8) of the Bank Holding Company Act (BHC Act) to conduct investment advisory activities may conduct those activities. The Board's interpretive rule has been upheld by the U.S. Supreme Court.[2]

Paragraph (h) of the Board's interpretive rule regarding investment advisory activities states that a bank holding company may not engage in the "sale or distribution" of shares of an investment company advised by the bank holding company or one of its nonbank subsidiaries.[3]

Since the time the interpretive rule was issued, the Board has determined, and the Supreme Court has agreed, that a company or bank engaged in securities brokerage activities is not engaged in the "issue, flotation, underwriting, public sale, or distribution of securities" for purposes of the Glass-Steagall Act.[4] The Board has also determined, and the U.S. Court of Appeals has agreed, that the provision of the combination of investment advice and securities brokerage services to a customer by an affiliate of a member bank does not implicate the prohibition, contained in section 20 of the Glass-Steagall Act, of the "public sale" of securities.[5]

In June 1990, the Board requested public comment[6] on a proposal to revise its interpretive rule to indicate that the reference in paragraph (h) of that rule to "sale or distribution" of shares of investment companies advised by the bank holding company or its subsidiary does not prohibit a bank holding company or its nonbank subsidiary from acting solely as agent for the account of customers in the purchase or sale of shares of these investment companies. Acting by order on a specific application, the Board has already determined that the practices at which the prohibition against "sale or distribution" of shares of investment companies is directed are not present where the nonbank affiliate proposes to act only as agent for customers desiring to purchase or sell shares of an investment company advised by a bank affiliate. *Norwest Corporation*, 76 Federal Reserve Bulletin 79 (1990) (*Norwest*).

In its request for public comment, the Board also proposed to permit a bank holding company or its nonbank subsidiary to provide investment advice to customers regarding the purchase or sale of shares of an investment company advised by a holding company affiliate. In addition, the Board proposed to remove other restrictions in paragraph (h) of the interpretive rule, including restrictions on the ability of a bank holding company to make prospectuses available to customers.[7]

In order to address the potential for conflicts of interest or other adverse effects, the Board proposed that any bank holding company that provides advice or brokerage services to customers regarding an investment company advised by an affiliate shall disclose such dual roles to customers; shall caution customers to read the prospectus of an investment company before investing in the investment company; and shall advise customers in writing that the investment company's shares are not deposits, are not obligations of any bank, are not insured by the Federal Deposit Insurance Corporation (FDIC), and are not endorsed or guaranteed in any way by any bank (unless such is the case).

Proposal as Adopted

The Board has determined to adopt the revision substantially as proposed, with certain modifications made to address matters raised by the commenters. In order to address any potential adverse effects, the Board has determined that a bank holding company or nonbank subsidiary of the holding company must make the disclosures discussed above when the company or subsidiary provides a customer with securities brokerage or investment advisory services (either separately or in combination) in connection with shares of any mutual fund or closed-end investment company advised by the bank holding company or any of its bank or nonbank subsidiaries.

The Board also believes that the officers and employees of a holding company bank that is permitted under relevant law and by its primary supervisor to provide advice or brokerage services to customers regarding the purchase of shares of an investment company advised by a nonbank affiliate of the bank should disclose the role of the nonbank affiliate and make the other types of disclosures required by the Board to be made by a bank holding company that provides these services. These disclosures are already required by the Office of the Comptroller of the Currency (OCC) for national banks. To the extent that a state-chartered bank owned by a bank holding company engages in providing advisory or brokerage services to bank customers in connection with an investment company advised by the bank holding company or a nonbank affiliate, but is not required by the bank's primary regulator to make disclosures comparable to the disclosures required to be made by a bank holding company providing such services, the Board believes that every bank holding company should require its subsidiary bank(s) to make the disclosures required by the Board to be made by the bank holding company.

Response to Public Comments

In response to its proposal, the Board received 29 comments from interested individuals and organizations, with 28 comments in favor and one opposed to the proposal. The principal issues raised by the comments are discussed below.

Authority to Make Proposed Revision

One commenter opposed the proposed revision to paragraph (h) of the interpretive rule. This commenter maintains that activities permitted under the proposal would constitute the public sale or distribution of securities in violation of section 20 of the Glass-Steagall Act (12 U.S.C. 377). The commenter also argued that the proposal would authorize activities that would not be a proper incident to banking for purposes of section 4(c)(8) of the BHC Act, because the adverse effects of engaging in the activities would outweigh public benefits.

The remaining 28 commenters favored adoption of the Board's proposal. Thirteen commenters argued that permitting bank holding companies to provide brokerage services and

[2] *Board of Governors* v. *Investment Company Institute*, 450 U.S. 46 (1981).

[3] 12 CFR 225.125(h).

[4] *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105, 114 (1983), *aff'd*, *Securities Industry Association* v. *Board of Governors*, 468 U.S. 207 (1984).

[5] *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986), *aff'dd*, *Securities Industry Association* v. *Board of Governors*, 821 F. 2d 810, 811 (D.C. Cir. 1987), *cert. denied*, 108 S. Ct. 697 (1988).

[6] 55 FR 25849, June 25, 1990.

[7] The Board also requested comments on whether it was appropriate, as a general matter, to amend paragraph (g) of the interpretive rule, which limits transactions between a bank holding company or its subsidiaries and an investment company advised by the bank holding company. The Board received general comments on this matter. The Board has not determined to amend paragraph (g) at this time and will consider whether to amend paragraph (g) in a separate proceeding.

investment advice to customers regarding investment companies advised by holding company affiliates does not violate the Glass-Steagall Act as interpreted by the U.S. Supreme Court and other courts. These commenters also argue that significant public benefits would result from the proposal, including additional convenience to consumers, increased efficiency, and an increase in competition, and that potential adverse effects are adequately addressed through proper disclosures to customers and compliance with applicable securities laws.

The Board's interpretive rule indicates that the Board intends that a bank holding company that has received approval under section 4(c)(8) of the BHC Act to conduct investment advisory activities may exercise all functions permitted to be exercised by an "investment adviser" under the Investment Company Act of 1940, except to the extent limited by the Glass-Steagall Act. As explained above, the Supreme Court has determined that the kinds of activities authorized by the proposed revision do not represent the underwriting, public sale, or distribution of securities or any other activity prohibited by the Glass-Steagall Act for banks and their affiliates. In addition, the OCC has similarly determined that these activities are permissible for national banks under the National Bank Act. The OCC has also previously determined that the Glass-Steagall Act does not prohibit a national bank from providing investment advice to customers and conducting securities brokerage activities for customer purchases of an investment company advised by the national bank.[8] On this basis, the Board has determined that a bank holding company is not prohibited by the Glass-Steagall Act from providing brokerage and advisory services to customers regarding an investment company advised by the bank holding company or any of its bank or nonbank affiliates.

For the reasons explained in previous Board orders and suggested by commenters in connection with this proposal, the Board also believes that these activities are permissible under section 4(c)(8) of the BHC Act. The Board has previously determined that the provision of securities brokerage activities and investment advisory activities, separately or in combination, is closely related to banking under section 4(c)(8) of the BHC Act.

The Board also believes that compliance with applicable securities laws and the supplemental disclosures required by the Board address the potential adverse effects from these activities and that, on this basis, the public benefits of the brokerage and advisory activities permitted outweigh potential adverse effects. The Board has previously expressed concern regarding the potential that members of the public might be confused as to whether the securities they are purchasing are federally insured or are obligations of a bank, and the potential that the public might link the economic fortunes of a mutual fund with a bank. The Board believes that the disclosure requirements implemented in this revision adequately address these potential adverse effects. The Board believes that, with these disclosures, the revision will benefit the public by providing increased customer convenience for purchasers of mutual fund shares and increased efficiencies for bank holding companies.

Disclosure Requirements

The commenters generally supported the proposed disclosure and other requirements designed to address adverse effects that potentially could arise from the proposed activities. Several commenters, however, suggested modifications to these requirements. One commenter asserted that the Board should provide the bank holding company with discretion to determine the manner and timing of any required disclosures to customers, including by providing the disclosures in confirmations, in customer statements, or in a separate mailing, because the operations of bank holding companies may differ. Another commenter suggested that the Board not require employees of a bank holding company to advise customers to read an investment prospectus because regulations of the Securities and Exchange Commission already require a broker to direct customers, in writing, to read the prospectus before investing in an investment company, and the holding company employees may not have a meeting with the customer that would permit an oral caution.[9] A third commenter recommended providing an exception from the requirement that a bank holding company advise customers that the brokered investment company shares are not guaranteed, or supported by, any bank, or the FDIC, in situations in which the prospectus gives notice that the investment company is uninsured. Another commenter maintained that the Board should not require a bank holding company's subsidiaries to provide specific disclosure of the bank holding company's dual roles as broker and adviser because such a requirement is not imposed upon securities brokers that are not affiliated with a bank holding company.

The Board's proposal requires that a bank holding company advise its brokerage and advisory services customers of the dual role of the holding company as adviser to the investment company and broker or adviser to the customer, and that the investment company's shares are not deposits, are not an obligation of or endorsed or guaranteed by any bank, and are not insured by the FDIC. These disclosures must be made at least once before a customer invests in an investment company advised by a holding company affiliate.

The interpretive rule has been modified to indicate that these disclosures may be made orally so long as written disclosures are immediately provided to the customer. The specific manner and timing of these written disclosures has been otherwise left in the discretion of the bank holding company, subject to applicable securities laws.

The disclosures required in the Board's proposal are not more onerous than the replacement disclosures suggested by the commenter, but provide a more comprehensive explanation designed to assure that the customer understands the potential conflict of interest from the dual roles of the holding company and that the resources of the bank and the FDIC do not support the investment company. Similar disclosures are required by the OCC when a national bank provides brokerage or advisory services to customers regarding an investment company advised by the bank. These more comprehensive disclosures are particularly helpful because bank holding company customers may not be fully aware of the relationship of the bank holding company with the investment company as a result of a limitation on an affiliate-advised investment company having a name in common with, or similar to, the bank holding company.

[8] *See, e.g.*, Letter, dated December 9, 1987, from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs regarding First Union National Bank of North Carolina.

[9] Rules 134 and 482 of the Securities and Exchange Commission (15 CFR 230.134 and 230.482) provide that an investment company may advertise its availability, if the advertisement contains certain prescribed information and states that the potential investor should obtain a copy of the prospectus of the investment company and should read such prospectus before investing.

As discussed above, in order to assure that the potential adverse effects at which the disclosure requirements are aimed do not occur when a bank affiliate provides advice on, or brokers shares of, an investment company for which the bank holding company provides investment advice, the Board believes that a holding company bank should disclose the advisory role of its affiliate and make the other disclosures required by the Board to be made by a bank holding company providing these services. The Board has amended its interpretive rule to include this requirement to the extent that a holding company bank providing brokerage or advisory services to its customers is not already required by its primary regulator to make such disclosures.

Other Comments

Two technical changes have been made to the proposed language to clarify another issue raised by commenters. The first change clarifies a phrase in the original proposal to indicate that the revisions of the interpretive rule to allow a bank holding company to conduct securities brokerage and investment advisory services presupposes that the bank holding company has received prior approval to engage in brokerage and/or investment advisory activities and does not eliminate the need for prior approval under section 4 of the BHC Act.

The second change makes clear that the Board's revision to its interpretive rule does not affect restrictions placed on the securities underwriting, public sale, or distribution activities of affiliates of banks that engage in these activities on a limited basis as permitted by the Board under section 20 of the Glass-Steagall Act and section 4(c)(8) of the BHC Act ("section 20 affiliate").[10] Moreover, this revision does not alter any other limitations or conditions imposed by Board order with respect to brokerage or investment advisory activities.

Administrative Procedure Act

One commenter contended that the Board failed to follow the requirements of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) (APA) in soliciting public comment on this proposal. The commenter contended that the Board's request for comment mischaracterizes the proposed revision as a clarification of the current interpretive rule. The commenter claimed that the proposal represents a rescission of a prior Board position. The commenter also argued that the Board has not provided an adequate basis for this change in position.

The Board believes that this commenter's arguments under the APA are misplaced. Even if the commenter were correct that the Board's proposal represents a change in a prior Board position, as explained above, the proposal is consistent with the Glass-Steagall Act as interpreted by the courts and with section 4(c)(8) of the BHC Act, and the Board has authority to adopt its current proposal.[11] The effect of the Board's proposal was fully explained in its request for comment, the legal authority for the proposed action was discussed, and a draft of the proposed revision to the interpretive rule was provided in order to permit all commenters a full opportunity to comment on the proposal. Moreover, in the Board's opinion, the APA requirement that an agency provide a reasoned justification for its actions is fulfilled by this Federal Register notice explaining the Board's action and its legal basis.[12]

Effect on Bank Holding Companies Currently Conducting Investment Advisory and Securities Brokerage Activities

In connection with this final rule, the Board hereby grants relief to those bank holding companies who have previously committed that they would not broker and/or recommend shares of an investment company advised by an affiliate because of the previous interpretive rule. This relief is granted so that these bank holding companies may conduct the activity subject to the limitations and disclosure requirements adopted by the Board in this revision. This grant of relief does not alter any other commitments or restrictions accepted or imposed by the Board, including the limitations imposed or the disclosures required to be made by a section 20 affiliate. Moreover, bank holding companies that participate in a joint venture engaged in securities brokerage or advisory activities, and the joint ventures owned by such bank holding companies are not relieved from any limitations imposed on the ability of the company or joint venture to provide advice or brokerage services in connection with investment companies sponsored, advised, distributed or controlled by the joint venture partner.

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. This revision will not place additional burdens on any bank holding company. It will provide for all bank holding companies access to services the Board finds appropriate under section 4(c)(8) of the BHC Act and consistent with court holdings.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

[10] *See, e.g., J.P. Morgan & Co. Inc.*, 75 Federal Reserve Bulletin 192 (1989); *PNC Financial Corp.* 75 Federal Reserve Bulletin 396 (1989).

[11] The commenter urged that the Board, should it adopt this proposal as a final rule, restore the language previously used in the interpretive rule that prohibited the "sale or distribution" of shares of investment companies advised by a bank holding company or its subsidiaries, and clarify that this prohibition does not prevent a bank holding company or its nonbank subsidiaries from acting solely as agent for the account of customers in the purchase or sale of shares of such investment companies. The commenter is concerned that in eliminating the prohibition, the Board would be permitting bank holding companies to engage in activities that would violate the Bank Holding Company Act and the Glass-Steagall Act. The Board believes it has addressed this concern by adding a statement in the interpretive rule providing expressly that a bank holding company and its nonbank subsidiaries may not engage, directly or indirectly, in the underwriting, public sale or distribution of securities of any investment company for which the holding company or any nonbank subsidiary provides investment advice except in compliance with the terms of section 20 and only after obtaining the Board's approval under section 4 of the Bank Holding Company Act.

[12] This commenter also asserts that the Board, in finalizing the proposal, would be adopting an unsound policy, and should defer action until the issues raised by the proposal are addressed through the legislative process. However, the restrictions in the interpretive rule and the revisions thereof are appropriate under the provisions of existing law and the Board is not precluded from modifying these restrictions to reflect recent developments. In this regard, the Board notes that this modification is consistent with the provisions of S.543 passed by the Senate last year, as well as the provisions of H.R.6 approved by the House Banking and Energy and Commerce Committees.

For the reasons set forth in this document, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.125, paragraph (h) is revised to read as follows:

§ 225.125 Investment adviser activities.

* * * * *

(h) Under section 20 of the Glass-Steagall Act, a member bank is prohibited from being affiliated with a company that directly, or through a subsidiary, engages principally in the issue, flotation, underwriting, public sale, or distribution of securities. A bank holding company or its nonbank subsidiary may not engage, directly or indirectly, in the underwriting, public sale or distribution of securities of any investment company for which the holding company or any nonbank subsidiary provides investment advice except in compliance with the terms of section 20, and only after obtaining the Board's approval under section 4 of the Bank Holding Company Act and subject to the limitations and disclosures required by the Board in those cases. The Board has determined, however, that the conduct of securities brokerage activities by a bank holding company or its nonbank subsidiaries, when conducted individually or in combination with investment advisory activities, is not deemed to be the underwriting, public sale, or distribution of securities prohibited by the Glass-Steagall Act, and the U.S. Supreme Court has upheld that determination. *See Securities Industry Ass'n* v. *Board of Governors*, 468 U.S. 207 (1984); *see also Securities Industry Ass'n* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988). Accordingly, the Board believes that a bank holding company or any of its nonbank subsidiaries that has been authorized by the Board under the Bank Holding Company Act to conduct securities brokerage activities (either separately or in combination with investment advisory activities) may act as agent, upon the order and for the account of customers of the holding company or its nonbank subsidiary, to purchase or sell shares of an investment company for which the bank holding company or any of its subsidiaries acts as an investment adviser. In addition, a bank holding company or any of its nonbank subsidiaries that has been authorized by the Board under the Bank Holding Company Act to provide investment advice to third parties generally (either separately or in combination with securities brokerage services) may provide investment advice to customers with respect to the purchase or sale of shares of an investment company for which the holding company or any of its subsidiaries acts as an investment adviser. In the event that a bank holding company or any of its nonbank subsidiaries provides brokerage or investment advisory services (either separately or in combination) to customers in the situations described above, at the time the service is provided the bank holding company should instruct its officers and employees to caution customers to read the prospectus of the investment company before investing and must advise customers in writing that the investment company's shares are not insured by the Federal Deposit Insurance Corporation, and are not deposits, obligations of, or endorsed or guaranteed in any way by, any bank, unless that happens to be the case. The holding company or nonbank subsidiary must also disclose in writing to the customer the role of the company or affiliate as adviser to the investment company. These disclosures may be made orally so long as written disclosure is provided to the customer immediately thereafter. To the extent that a bank owned by a bank holding company engages in providing advisory or brokerage services to bank customers in connection with an investment company advised by the bank holding company or a nonbank affiliate, but is not required by the bank's primary regulator to make disclosures comparable to the disclosures required to be made by bank holding companies providing such services, the bank holding company should require its subsidiary bank to make the disclosures required in this paragraph to be made by a bank holding company that provides such advisory or brokerage services.

* * * * *

Board of Governors of the Federal Reserve System, July 2, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-16071 Filed 7-8-92; 8:45 am]

BILLING CODE 6210-01-F

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration; Delegation of Authority; Region II

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulation delegating authority to undertake program functions for certain field personnel. Specifically, in light of a reorganization of SBA's staff in Region II (New York; New Jersey; Virgin Islands; and Puerto Rico), this rule revises the authority delegated to the several positions of Assistant Regional Administrator (ARA).

DATES: This rule is effective July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, (Acting) Deputy Regional Administrator, U.S. Small Business Administration, New York Regional Office, 26 Federal Plaza, room 31–08, New York, New York, 10278, (212) 264–4480.

SUPPLEMENTARY INFORMATION: The SBA is amending its regulation delegating authority to undertake program functions for certain personnel in its Region II Regional Office. SBA's Region II staff has been reorganized by action of the Administrator dated March 31, 1992, eliminating the positions of ARA for Finance and Investment; Procurement Assistance; Minority Small Business and Capital Ownership Development; and Business Development. The functions previously performed by the incumbents in such positions will now be carried out at the District Office level by incumbents occupying the new positions of Associate District Director for the specific program function. As such, SBA's regulation delegating authority to field personnel requires revision reflecting this reorganization in order to allow program administration to continue uninterrupted and in an efficient manner.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601

et seq.), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

SBA is publishing this regulation governing agency organization, practice, and procedure as a final rule without notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure; Authority delegation; Organization and function, Government agency; Reporting and recordkeeping requirement.

For the reasons set forth above, SBA is amending part 101 of Title 13, Code of Federal Regulations, as follows.

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5 of Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2, Delegation of authority to conduct program activities in field offices, is amended by adding a new paragraph at the end of the Preface to read as follows:

§ 101.3–2 Delegation of authority to conduct program activities in field offices

* * * * *

Preface

* * * * *

With respect to SBA personnel in Region II only (New York; New Jersey; Puerto Rico; and the Virgin Islands), the authority delegated herein to be exercised by the several positions of Assistant Regional Administrator shall be redelegated to the several positions of Associate District Director responsible for the same program functions.

* * * * *

Dated: July 1, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–16033 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ASW–17; Amdt. 39–8257; AD 92–11–07]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 205B, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205B, 212, and 412 helicopters, that requires a repetitive magnetic particle inspection of the main transmission lower planetary spider gear. This amendment is prompted by the results of a crack growth analysis of a planetary spider gear that cracked in service. The actions specified by this AD are intended to detect and prevent a fatigue failure of the main transmission lower planetary spider gear, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 10, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott A. Horn, FAA, Rotorcraft Certification Office , ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5177; fax (817) 740–3394.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to BHTI Model 205B, 212, and 412 helicopters was published in the **Federal Register** on December 10, 1991 (56 FR 64485). That action proposed to require a repetitive magnetic particle inspection of the main transmission lower planetary spider gear. The proposal was prompted as a result of the manufacturer conducting a crack growth analysis of a planetary spider gear that recently cracked in service. Two additional spider gears were subsequently fatigue tested to develop and support the necessary action. These test data and analyses showed that, over time and under normal operating conditions, a crack can appear in the lower planetary spider gear and spread to a critical length causing the gear to fail.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 875 helicopters of U.S. registry will be affected by this AD, that it will either take approximately 32 work hours per helicopter or 6 work hours per helicopter if performed during an overhaul, to accomplish the required actions, and that the average labor rate is $55 per work hour. It is estimated that one half of the helicopter fleet may be affected each year by the requirements of this AD. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to range from $144,375 to $770,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action:

(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92-11-07 **Bell Helicopter Textron, Inc. (BHTI):** Amendment 39-8257. Docket No. 91-ASW-17.

Applicability: All Model 205B, 212, and 412 helicopters, certificated in any category, with main transmission lower planetary spider gear, part number (P/N) 204-040-785-003, installed.

Compliance: Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main transmission lower planetary spider gear, P/N 204-040-785-003, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 600 hours' time in service after the effective date of this AD, or prior to the accumulation of 3,100 hours' time in service from the last magnetic particle inspection, whichever occurs first, perform a magnetic particle inspection of the main transmission lower planetary spider gear in accordance with the applicable BHTI maintenance, repair and overhaul manuals.

(b) Repeat the inspection of paragraph (a) at intervals not to exceed 3,100 hours' time in service from the last inspection.

(c) Replace unairworthy parts with airworthy parts before further flight.

(d) An alternative method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective August 10, 1992.

Issued in Fort Worth, Texas, on April 28, 1992.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-16032 Filed 7-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ASW-14; Amendment 39-8293, AD 92-06-17]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 92-06-17, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Model R22 series helicopters by individual letter. This AD requires a one-time inspection of the affected Model R22 series helicopters for certain bolts that must be removed before further flight. This amendment is prompted by a report of a tail rotor control system bolt failure during ground run-up of a new Model R22 Beta helicopter. The actions specified by this AD are intended to prevent failure of the tailrotor control bolt, and other bolts, that could result in loss of the helicopter if failure occurred.

DATES: Effective July 24, 1992, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 92-06-17, issued on March 17, 1992, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-14, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd., Torrance, California 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Rules Docket, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Charles Matheis, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-123L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5235.

SUPPLEMENTARY INFORMATION: On March 17, 1992, the FAA issued Priority Letter AD 92-06-17, applicable to Robinson Helicopter Company (RHC) Model R22 series helicopters, which requires a one-time inspection for certain NAS1304-16 bolts, identified by the letters "AF" on the head of the bolts. That action was prompted by a report of a bolt failure, caused by hydrogen embrittlement, during ground run-up of a new Model R22 Beta helicopter. These particular bolts, identified by the letters "AF", may be susceptible to hydrogen embrittlement and cracks, and may have been installed, delivered, or distributed by RHC between July 9, 1991, and March 1, 1992. This condition could, if not corrected, result in failure of a bolt, and if installed in the tail rotor control system, could result in possible loss of tail rotor control. The bolt is also used in other critical locations. Therefore, bolts with the "AF" letter designation shall be removed before further flight and replaced with an airworthy bolt. Bolts with the AF letter designation are not to be installed as replacement parts.

Since this condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Priority Letter AD 92-06-17, to prevent tail rotor control system bolt failure as well as other bolts failure. The AD requires a one-time inspection of certain bolts specified above.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 17, 1992, to all known U.S. operators and owners of RHC Model R22 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communciations received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-14." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11304, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92-06-17 **Robinson Helicopter Company (RHC):** Amendment 39-8293. Docket No. 92-ASW-14. Final Rule of a Priority Letter AD.

Applicability: All Model R22 series helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of NAS1304-16 AF bolts, resulting in loss of helicopter control, accomplish the following:

(a) Within the next 10 hours' time in service or before March 30, 1992, whichever comes first, visually inspect the helicopters specified in (1), at the inspection areas or locations specified in (2), to determine the identification of the NAS1304-16 bolts.

(1) The helicopters affected are—

(i) R22 Serial Numbers (S/N) 1880 through 2060 and S/N 2073;

(ii) All R22 helicopters regardless of S/N overhauled or repaired at Robinson Helicopter Company between July 9, 1991, and March 1, 1992; and

(iii) All R22 helicopters regardless of S/N for which maintenance was performed after July 9, 1991, in the inspection locations specified in paragraph (a)(2).

(2) The inspection locations are—

(i) The tail rotor blade control assembly at the aft end of the tail cone, including tail rotor controls connecting the rotor blade pitch link to the rotor pitch control cross head (slider) arms, and the rotor pitch link to the rotor blade attachment;

(ii) The lower aft corners of the cabin, both left-hand and right-hand sides, where the attachment joins the cabin to the welded frame assembly; and

(iii) The region above the swashplate attaching the counter weights (balance weights) to the swashplate assembly (also described as the main rotor balance weights attachment to the Chord Arm Yoke).

Note: Further details of the installations are contained in Robinson Model R22 Illustrated Parts Catalog (IPC).

(b) Before further flight, remove those NAS 1304-16 bolts bearing the identification letters "AF" on the head of the bolt and replace with serviceable NAS1304-16 bolts with head marking other than "AF" or with NAS6604-16 bolts.

(c) After the effective date of this AD, NAS1304-16 bolts identified with the letters "AF" shall no longer be installed as a replacement part in any application on these helicopters.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) Copies of the applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd, Torrence, CA 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, Bldg. 3B Room 158, Fort Worth, Texas.

(g) This amendment becomes effective July 24, 1992, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 92-06-17, issued March 17, 1992, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 17, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-16031 Filed 7-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-92-1496; FR-2623-F-04]

Introduction; Title I Property Improvement and Manufactured Home Loans; Approval of Lending Institutions Reform of the Title I Program; Technical Amendment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a technical amendment to correct an omission in the Department's final rule that was published in the **Federal Register** on October 18, 1991 (56 FR 52414). The final rule amended 24 CFR Parts 200, 201, and 202 with regard to the insurance of lenders against losses sustained as a result of borrower

defaults on property improvement and manufactured home loans.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2880 or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

On October 18, 1991 (56 FR 52414), the Department published a final rule implementing major changes to reform the title I property improvement and manufactured home loan programs. The effective date of the final rule was November 18, 1991.

After the final rule was published, the Department discovered that a needed amendment to § 201.55(a)(1) of the title I regulations was omitted from the October 18, 1991 final rule. This document amends § 201.55(a)(1) to correct this omission.

Prior to November 18, 1991, § 201.51(a)(2) of the regulations provided that, if the same lender held both a Title I loan and a senior mortgage on a property securing a defaulted title I property improvement loan, the lender had to obtain a HUD-approved appraisal of the property prior to foreclosing on the senior mortgage. A companion provision in § 201.55(a)(1) specified that, in calculating the lender's insurance claim, the unpaid amount of the Title I loan obligation would be reduced by the amount by which the appraised value or the actual proceeds from the sale of the property, whichever was greater, exceeded the unpaid balance on the senior mortgage.

In the October 18, 1991 final rule, § 201.51(a)(2) was amended to remove the requirements on lenders holding both a Title I loan and a senior mortgage. In their place, the Department established a new procedure which would permit a lender to foreclose on property securing a defaulted title I property improvement loan and later submit an insurance claim, provided that the lender obtained the prior approval of the Secretary before proceeding against the property. The Secretary's decision on whether to agree to foreclosure would be based upon all relevant factors, including but not limited to the appraised value and the amount of the outstanding loans on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. As a practical matter, the Department would not agree to foreclosure unless it appeared that the lender could sell the property for enough to cover all of its expenses and avoid an insurance claim. The Department expected that giving lenders the opportunity to pursue foreclosure, but also to file a claim if a deficiency did occur, would reduce claim losses for both lenders and the Department.

In establishing this new procedure in § 201.51(a)(2), the Department did not revise the claim calculation requirements in § 201.55(a)(1). Because of this omission, a lender that had proceeded with foreclosure with HUD's approval could not be paid an insurance claim, because the language in § 201.55(a)(1) does not take into account that foreclosure and disposition costs are legitimate expenses that need to be deducted from the sale proceeds in determining the amount of funds that are available to apply to the Title I loan. Also, since the lender has obtained HUD's prior approval to the foreclosure, the lender should not be penalized if the property cannot be sold for the appraised value.

Therefore, the Department is amending § 201.55(a)(1) to specify that, where the Department has given its prior approval to the foreclosure under § 201.51(a)(2), the unpaid amount of the loan obligation will be reduced by the amount of any excess proceeds from the foreclosure and disposition of the property, after deducting (a) the balances due on any obligations senior to the Title I loan obligation; and (b) customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the following amendments are made to 24 CFR part 201:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. In § 201.55, paragraph (a)(1) is revised to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(a) * * *

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under § 201.51(a)(2), the unpaid amount of the loan obligation shall be reduced by the proceeds received from the property's sale or disposition, after deducting the following:

(i) The balances due on any obligations senior to the Title I loan obligation; and

(ii) Customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.

* * * * *

Dated: July 2, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–16054 Filed 7–8–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 1598–92]

Redelegations of Authority to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and Director, Asset Forfeiture Office, in the Criminal Division

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order is the Criminal Division's implementation of the first increase in the settlement and Compromise authority delegated to the Assistant Attorneys General since 1981 It provides a corresponding increase in the settlement and compromise authority redelegated to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and the Director, Asset Forfeiture Office, in the Criminal Division, to further the efficient operation of the Department of Justice

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Lee J. Radek, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, DC 20530, 202–514–1263.

SUPPLEMENTARY INFORMATION: This Order conforms the redelegations of the Assistant Attorney General's authority to compromise civil penalties and forfeitures and close civil claims to subpart Y, part 0, title 28 of the Code of Federal Regulations (CFR), §§ 0.160, 0.164, 0.165, and 0.168 as amended by the Attorney General (Order No. 1478–91, 56 FR 8923–24, March 4, 1991). Subject to limitations set forth in §§ 0.160(c) and 0.168(a), § 0.168(d) provides that redelegations of this authority by Assistant Attorneys General to United States Attorneys will include the authority: (1) To accept offers in compromise in cases involving original claims by the United States of not more than $500,000; (2) to accept offers in compromise in cases involving original claims by the United States between $500,000 and $5,000,000, so long as the difference between the original claim and the proposed settlement does not exceed 15 percent of the original claim; and (3) to accept offers in compromise of claims against the United States in cases where the principal amount of the proposed settlement does not exceed $500,000.

This Order supersedes Criminal Division Directive No. 116 (48 FR 50712–13, November 3, 1983), which contains the current redelegation of the authority of the Assistant Attorney General, Criminal Division, to compromise civil penalties and forfeitures and close civil claims.

This Order is exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this Order will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice. 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies), Penalties, Seizures and forfeitures.

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The appendix to subpart Y of part 0 is amended under the heading "Criminal Division" by removing Directive No. 116 and adding in its place Attorney General Order No. 1598–92 to read as follows:

Appendix to Subpart Y—Redelegations of Authority To Compromise and Close Civil Claims

* * * * *

Criminal Division

* * * * *

[Attorney General Order No. 1598–92]

Redelegations of Authority to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and Director, Asset Forfeiture Office, in the Criminal Division

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, as amended, particularly §§ 0.160, 0.162, 0.164, 0.168 and 0.171, it is hereby ordered as follows:

(a)(1) Each U.S. Attorney is authorized in cases delegated to the Assistant Attorney General of the Criminal Division—

(A) To accept or reject offers in compromise of—

(i) Claims in behalf of the United States in all cases (other than forfeiture cases) in which the original claim did not exceed $500,000, and in all cases in which the original claim was between $500,000 and $5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed 15 percent of the original claim; and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before accepting offers in compromise or plea offers in forfeiture cases in which the orignial claim was $5,000,000 or more, and in forfeiture cases in which the original claim was between $500,000 and $5,000,000, when the difference between the gross amount of the original forfeiture sought and the proposed settlement exceeds 15 percent of the original claim; and

(ii) Claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $500,000; and

(B) To close (other than by compromise or entry of judgment) claims asserted by the United States in all cases (other than forfeiture cases) in which the gross amount of the original claim does not exceed $500,000, and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before closing a forfeiture case in which the gross amount of the original forfeiture sought is $500,000 or more.

(2) This subsection does not apply—

(A) When, for any reason, the compromise or closing of a particular claim (other than a forfeiture case) will, as a practical matter, control or adversely influence the disposition of other claims, which, when added to the claim in question, total more than the respective amounts designated above;

(B) When the U.S. Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the personal attention of the Assistant Attorney General;

(C) When a settlement converts into a mandatory duty the otherwise discretionary authority of an agency or department to revise, amend, or promulgate regulations;

(D) When a settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek a particular appropriation or budget authorization; or

(E) When a settlement limits the discretion of a Secretary or agency administrator to make policy or managerial decisions committed to the Secretary or agency administrator by Congress or by the Constitution.

(b) Notwithstanding the provisions of this Order, the Assistant Attorney General of the Criminal Division may delegate to U.S. Attorneys authority to compromise or close other cases, including those involving amounts greater than as set forth in paragraph (a) above, and up to the maximum limit of his authority, where the circumstances warrant such delegation.

(c) All other authority delegated to me by §§ 0.160, 0.162, 0.164 and 0.171 of title 28 of the Code of Federal Regulations not falling within the limitations of paragraph (a) of this Order is hereby redelegated to Section Chiefs in the Criminal Division, except that—

(1) The authority delegated to me by §§ 0.160, 0.162, 0.164 and 0.171 of that title relating to conducting, handling, or supervising civil and criminal forfeiture litigation (other than bail bond forfeiture), including acceptance or denial of petitions for remission or mitigation of forfeiture, is hereby redelegated to the Director of the Asset Forfeiture Office; and

(2) When a Section Chief or the Director of the Asset Forfeiture Office is of the opinion that because of a question of law or policy presented, or for any other reason, a matter described in paragraph (c) should receive the personal attention of a Deputy Assistant Attorney General or Assistant Attorney General, he shall refer the matter to the appropriate Deputy Assistant Attorney General or to the Assistant Attorney General.

(d) Notwithstanding any of the above redelegations, when the agency or agencies involved have objected in writing to the proposed closing or dismissal of a case, or to the acceptance or rejection of an offer in compromise, any such unresolved objection shall be referred to the Assistant Attorney General for resolution.

Dated: May 19, 1992.

Robert S. Mueller, III,

Assistant Attorney General, Criminal Division.

Approved: June 5, 1992.

Wayne A. Budd,

Associate Attorney General.

[FR Doc. 92–15325 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–10–M

28 CFR Part 44

[Order No. 1520–91]

Unfair Immigration-Related Employment Practices; Correction

AGENCY: Department of Justice.

ACTION: Correction to interim rule.

SUMMARY: The Department of Justice is correcting the amendatory language in regulations concerning unfair immigration-related employment practices that appeared in the Federal Register on August 14, 1991 (56 FR 40247).

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: William Ho-Gonzalez, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490, telephone (202) 653–8121 (Voice) or (202) 296–0168 (TDD number for the hearing impaired); or Kirk M. Flagg, Trial Attorney, Office of Special Counsel for Immigration Related Unfair Employment Practices, (202) 653–8121 (Voice) or (202) 296–0168 (TDD).

SUPPLEMENTARY INFORMATION: On August 14, 1991, the Department of Justice promulgated an interim rule with request for comments concerning unfair immigration-related employment practices. (56 FR 40247.) The Federal Register has informed the Department that it would read the amendatory language regarding a change to 28 CFR 44.301 to delete paragraphs (d)(2)(i) and (d)(2)(ii), which the Department intended to leave unchanged. This notice clarifies the amendatory language.

The following correction is made in Order No. 1520–91, Unfair Immigration-Related Employment Practices published in the Federal Register on August 14, 1991 (56 FR 40247).

§ 44.301 [Corrected]

The amendatory language in the third column on page 40249 that reads "5. Section 44.301 paragraph (d)(2) is revised to read as follows:" is corrected to read as follows:

"5. In § 44.301, the introductory text of paragraph (d)(2) is revised to read as follows:"

Dated: July 3, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–16146 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1425

Mediation Assistance in the Federal Service

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: This final rule is published in order to provide a more complete and accurate Form F–53, Notice to Federal Mediation and Conciliation Service, and to facilitate the entry of data from the Form F–53 into the FMCS automated data processing system. The rule continues the requirement of notification for contract expiration or reopener negotiations, and now encourages requests for assistance for mid-term or Impact and Implementation bargaining. It also provides for labor and management to jointly request grievance mediation by FMCS.

Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35), the Federal Mediation and Conciliation Service submitted its final rule to the Office of Management and Budget (OMB) on September 9, 1991 and received its approval on November 22, 1991 for the use of this form F–53 through November 30, 1994.

EFFECTIVE DATE: August 10, 1992.

SUPPLEMENTARY INFORMATION: On June 15, 1989, FMCS published a notice of proposed rulemaking in the Federal Register (54 FR 25467). This notice was published in order to revise FMCS Form F–53, which is used for notification of contract expirations or reopener in the Federal service, and to revise the text of 29 CFR part 1425, which accompanies the illustration of Form F–53 in the agency's regulations (29 CFR 1425.2).

Form F–53 is made available to assist federal agencies and labor organizations to obtain FMCS services, as provided for in title 5 U.S.C. 7119(a). The revision of Form F–53 allows parties to more clearly and accurately state the service requested and arranges information in a manner which aids the entry of data into FMCS computer records. The revised version of Form F–53 is shown below in this rule for purposes of identification.

A summary of information pertaining to Form F–53 is as follows:

Form number: FMCS F–53, OMB 3076–0005.

Frequency: On occasion.

Respondent: Parties to a Federal Sector dispute.

Obligation: Voluntary.

Burden: Approximately 600 responses per year; approximately 100 reporting hours per year; approximately 15 minutes per response.

Need and Use: The information is needed to advise FMCS of Federal Sector disputes pursuant to 29 CFR part 1425, 1425.3. It is used in order to make assignments of cases to FMCS mediators.

Comments

Twelve persons provided written comments and/or proposed revisions. Of this number, eight were representatives of management and four were representatives of unions. Two other oral comments were received by telephone. One was from a federal union, the other from a federal agency labor relations representative. A summary of the 14 comments, with the response of FMCS, follows:

1. Notice of "I&I", Mid-Term Changes or Other Changes

The last sentence of the first paragraph at 29 CFR 1425.2 currently states that parties involved in mid-term or impact bargaining need not submit a Form F–53 to FMCS. In order to promote the submission of Form F–53 in these situations, the revised section states that parties "* * * are encouraged to send a notice" (29 CFR 1425.2(b)).

This modification was made because of increased impact-and-implementation (I&I) and mid-term bargaining in the absence of a procedure for informing FMCS mediators about these situations in advance. Although telephone calls to the mediator or district director have been made, these calls have often not allowed sufficient advance time for scheduling mediator activities.

The response to this proposal by almost all commentors was that requiring a notice for all I&I bargaining situations, especially on a form would be too burdensome. Instead, the recommendation was to require a filing with FMCS only when the mediation services were desired.

Thus, the Department of Energy Headquarters commented "Don't make it mandatory." They proposed the language be rewritten, as follows, "Although not required, the parties engaged in mid-term or I&I are encouraged to send a notice. In such a notice, the parties are requested to briefly list the issues being bargained." The Department of Energy, Bonneville Power Administration in Portland, Oregon, wrote that the parties be encouraged to send a notice and list issues briefly. The Panama Canal Commission opposed sending I&I notices and listing issues as too burdensome.

The Department of the Army at Aberdeen Proving Ground opposed the proposed I&I notice requirement because many I&I bargaining disputes are over office moves and relocations and most are resolved amicably. If the notice requirement were made, FMCS might be flooded with needless paper.

Union responses ranged from the Seafarers International Union, which said that I&I reporting was too onerous, to the National Treasury Employees Union suggesting that the notice identify if it is union-initiated mid-term bargaining, to the American Federation of Government Employees reserving judgment if the rule was an undue hardship, to the National Weather Service Union which said the I&I notice requirement was acceptable.

Recognizing these labor and management concerns, FMCS has decided that the new form will now encourage, rather than mandate filing only when a request for assistance in these matters is desired. These should be filed whenever the parties, singly or jointly, find that mediation assistance is needed. The requesting party is asked to specify the issues and type of bargaining. FMCS will continue to require, however, notification of contract termination negotiations and contractual reopener negotiations.

2. Listing Issues Involved

Two commenters said there was not enough room provided on the proposed form for listing issues. One suggested a change to "Brief description of issues involved are attached."

The FMCS purpose is only to obtain a very general topic heading; e.g., smoking or alternative work schedules or official time etc., rather than a detailed listing. Guidance to that effect will be provided on the instructions on the back of the Form, so the amount of space provided should be adequate.

3. The Difference Between Filing a Notice of Contract Expiration or Initial Contract Bargaining and a Request for Mediation Assistance

Form F–53 was modified to state "1. *Notice* to FMCS in regard to (check one)

——The expiration of an existing contract,
——An initial contract.

This was followed by an, item 2, calling for a similar indication for a request for assistance in regard to (check one)

——Impact and/or Implementation Bargaining; or
——Mid-term Bargaining

The reason for this distinction is to separate those items for which notice is required under the Act, from those in which it is optional. Notices are required in order to give FMCS mediators enough time to schedule meetings, meet with the parties in advance of contract expiration dates and allow for the possibility of early bargaining. This applies to contract expirations, initial contract bargaining situations and contractual re-openers. Should the parties or party *request* mediation assistance in I&I or any mid-term bargaining, such requests can be made on this form.

4. Time Limits

The time limit for notice for a contract expiration is "at least 30 days prior to expiration." The text has been amended to add provisions also requiring notice 30 days prior to the reopener date of an existing contract. For parties seeking an initial agreement, notice is "within 30 days after commencing negotiations." (29 CFR 1425.2).

Two organizations commented on these limits, saying notice should be used to initiate negotiations rather than request assistance. Two other organizations said it should be "not later than 30 days", prior to the expiration or modification date of an existing agreement.

The view of FMCS is that the purpose of the required notice is to alert FMCS and permit it sufficient time to proffer its services.

As to requiring a party to file a notice "no later than 30 days prior to expiration" as opposed "at least 30 days prior to expiration", FMCS sees no significant distinction and has therefore not modified the text of these provisions.

5. Grievance Mediation

Another change is a new section, 29 CFR 1425.2(c)—for mediation of grievances. Parties seeking to obtain grievance mediation are required to send a joint request. FMCS retains discretion to determine in what circumstances it will make grievance mediation available.

There were four comments on this grievance mediation provision. The Department of Army Headquarters wrote that grievance mediation should be optional, on a case-by-case basis. The Department of Air Force Headquarters wrote that grievance mediation should be allowed only if specifically provided for in the collective bargaining agreement, and a unilateral request for grievance mediation should not be permitted. The National Weather Service union said FMCS should allow grievance mediation requests to be signed by only one party. The Department of Transportation suggested FMCS amend § 1425.3 to describe FMCS's functions to include grievance mediation since currently the description of the function is limited to assistance in resolving negotiation disputes.

FMCS concludes that a joint request for grievance mediation is critical to establishing a basis for resolving the problem. Since contractual positions are involved, both sides must agree at the outset to this process.

As to whether § 1245.3 needs to be amended, FMCS feels that this is not necessary because of the following considerations.

Even though the Federal Service Labor-Management Relations Statute, chapter 71 of title 51 U.S.C. (FSLMRS) does not address grievance mediation, there is no prohibition of such activity. In addition, the Administrative Dispute Resolution Act of 1990, Public Law 101–552, section 581(8), does provide, by implication, that such authorization is conferred. That section states that the only grievances that are excluded from coverage under that Act are those that are already prohibited in the FSLMRS at section 7121(c) of title 5. FMCS views this as providing implied authority to assist in the resolution of other grievances. The Agency, moreover, views its activities in grievance mediation as part of its effort to assist the parties in improving their relationships and offers grievance resolution assistance along with joint training in problem-solving and introduction in interest-based negotiations in order to foster more productive collective bargaining. The Agency has worked with unions and agencies to establish pilot programs to assist in grievance mediation as a way of improving labor relations and attitudes. In addition, the Agency will seek further clarification of its authority under the FSLMRS and the Administrative Dispute Resolution Act. In the interim, FMCS will accept joint requests for such assistance but reserves its discretion not to proceed in all cases.

Since the proposed rule was published on June 15, 1989, FMCS adopted Grievance Mediation Guidelines as follows:

1. The parties shall submit a joint request, signed by both parties requesting FMCS assistance.

2. Any time limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

3. Proceedings before the mediator will be informal and rules of evidence will not apply. No record, stenographic, tape recordings or other will be made of mediation sessions. The mediators notes

are confidential and shall not be revealed.

4. The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

5. The mediator has no authority to compel any resolution of the grievance.

6. In the event that no settlement is reached during the mediation conference(s), the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

7. If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner and form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties, grievant(s) or the mediator during the grievance mediation session(s) can be used during arbitration proceedings.

8. When the parties choose the FMCS grievance mediation procedure, they agree to abide by these guidelines and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service harmless as to any claim of damages arising from the mediation activity.

9. The grievant shall be entitled to be present at the mediation conference(s).

These guidelines have been incorporated in this regulation at § 1425.2(d).

6. Other Comments

Other comments about the proposed revision were: (1) The form takes more than 10 minutes to complete, and (2) FMCS should consider offering Alternative Dispute Resolution (ADR) services on the form.

FMCS is of the view that the information requested is basic and easy to supply. Therefore, in a majority of cases, 10 minutes or less will be needed. In particular since description of issues should be brief and the number of employees requested on the form (Item 7) is approximate, the amount of time consumed should not be great. As to (ADR), the Service does provide other programs in the Federal sector, but does not believe that this should be made part of the F–53 Form, as dealing with these other services on the same form might be confusing to the parties.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) a significant decline in productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act Notice

The collection of information in this rule was submitted to the Office of Management and Budget under section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments regarding any aspect of this information collection should be submitted to the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, Attention: Eileen B. Hoffman, and to the Office of Management and Budget, Attention: Desk Officer for FMCS, OMB Room 3001, Washington, DC 20503.

Regulatory Flexibility Act Certification

The FMCS finds that this rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the final rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR 1425

Collective bargaining, Administrative Practice and Procedure, Government employees, Labor Management Relations.

Dated: January 13, 1992.

Bernard E. DeLury,

Director, FMCS.

Accordingly, part 1425, is amended as follows:

PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

1. The authority citation for 29 CFR part 1425 is revised to read as follows:

Authority: 5 U.S.C. 581(8); 7119, 7134.

2. Section 1425.2 is revised to read as follows:

§ 1425.2 Notice to the Service of agreement negotiations.

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with FMCS Notice Processing Unit, 2100 K Street, NW., Washington, DC 20426, at least 30 days prior to the expiration or modification date of an existing agreement, or 30 days prior to the reopener date of an existing agreement. In the case of an initial agreement the notice shall be filed within 30 days after commencing negotiations.

(b) Parties engaging in any mid-term or impact and/or implementation bargaining are encouraged to send a request to FMCS if assistance is desired. Such a request may be sent by either party or may be submitted jointly. In regard to such requests, a brief listing of the issues is suggested. Such listing should be general in nature, e.g., smoking policies or Alternative Work Schedules (AWS).

(c) Parties requesting grievance mediation must send a request signed by both the union and the agency involved. Receipt of such request does not commit FMCS to provide its services. FMCS has the discretion to determine whether or not to perform grievance mediation, as such service may not be appropriate in all cases.

(d) The guidelines for FMCS grievance mediation are:

(1) The parties shall submit a joint request, signed by both parties requesting FMCS assistance. The parties agree that grievance mediation is a supplement to, and not a substitute for, the steps of the contractual grievance procedure.

(2) The grievant is entitled to be present at the grievance mediation conference.

(3) Any time limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

(4) Proceedings before the mediator will be informal and rules of evidence do not apply. No record, stenographic or tape recordings of the meetings will be made. The mediators notes are confidential and content shall not be revealed.

(5) The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

(6) The mediator has no authority to compel resolution of the grievance.

(7) In the event that no settlement is reached during the mediation conference, the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

(8) If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner

form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties or the mediator during the grievance mediation session can be used during arbitration proceedings.

(9) When the parties choose the FMCS grievance mediation procedure, they have agreed to abide by these guidelines established by FMCS, and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service to conduct the mediation conference harmless of any claim of damages arising from the mediation process.

BILLING CODE 6732-01-M

FMCS FORM F-53
REVISED 5-92

Form Approved
OMB No. 3076-0005
Exp. May 31, 1994

FEDERAL SECTOR LABOR RELATIONS
NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE

MAIL TO:

NOTICE PROCESSING UNIT
FEDERAL MEDIATION AND CONCILIATION SERVICE
2100 K STREET N.W.
WASHINGTON D.C. 20427

THIS NOTICE IS IN REGARD TO: (MARK "X")

(1) ☐ AN INITIAL CONTRACT (INCLUDE FLRA CERTIFICATION NUMBER) #_____
☐ A CONTRACT REOPENER REOPENER DATE ____/____/____
☐ THE EXPIRATION OF AN EXISTING AGREEMENT EXPIRATION DATE: ____/____/____

(2) ☐ ***OTHER REQUESTS FOR THE ASSISTANCE OF FMCS IN BARGAINING*** ***(MARK "X")***
SPECIFY TYPE OF ISSUE(S).

(3) ☐ ***REQUEST FOR GRIEVANCE MEDIATION (SEE ITEM # 10)*** ***(MARK "X")***
ISSUE(S):

(4) NAME OF FEDERAL AGENCY NAME OF SUBDIVISION OR COMPONENT, IF ANY

STREET ADDRESS OF AGENCY CITY STATE ZIP

AGENCY OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

(5) NAME OF NATIONAL UNION OR PARENT BODY NAME AND / OR LOCAL NUMBER

STREET ADDRESS CITY STATE ZIP

UNION OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

(6) ***LOCATION OF NEGOTIATIONS OR WHERE MEDIATION WILL BE HELD***
STREET ADDRESS CITY STATE ZIP

(7) APPROX. # OF EMPLOYEES IN BARGAINING UNIT(S) >> | IN ESTABLISHMENT >> |

(8) THIS NOTICE OR REQUEST IS FILED ON BEHALF OF (MARK "X") ☐ UNION ☐ AGENCY

(9) NAME AND TITLE OF OFFICIAL(S) SUBMITTING THIS NOTICE OR REQUEST AREA CODE & PHONE NUMBER

STREET ADDRESS CITY STATE ZIP

FOR GRIEVANCE MEDIATION, THE SIGNATURES OF BOTH PARTIES ARE REQUIRED:*

(10) SIGNATURE (AGENCY) DATE | SIGNATURE (UNION) DATE

*Receipt of this form does not commit FMCS to offer its services. Receipt of this form will not be acknowledged in writing by FMCS. While use of this form is voluntary, its use will facilitate FMCS service to respondents. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FMCS Division of Administrative Services, Washington, D.C. 20427, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20603.

For Instructions, see back

Instructions

Complete this form, please follow these instructions.

In item # 1. Check the block and give the date if this is for an existing agreement or reopener. The FLRA Certification number should be provided if available. If not known, please leave this item blank. Absence of this number will not impede processing of the Form.

In item # 2. If other assistance in bargaining is requested please specify: e.g; impact and implementation bargaining (I&I) and/or mid-term bargaining and provide a brief listing of issues, e.g. Smoking, Alternative Work Schedules (AWS), ground rules, office moves, or if desired, add attached list. This is only if such issues are known at time of filing.

In item #3 Please specify the issues to be considered for grievance mediation. Please refer to FMCS guidelines for processing these request. **Please make certain that both parties sign this request!**

In item #4. List the name of the agency, as follows: The Department, and the subdivision or component. For example: U.S. Dept. of Labor, BLS, or U. S. Dept. of Army, Aberdeen Proving Ground, or Illinois National Guard, Springfield Chapter. If an independent agency is involved, list the agency, e.g. Federal Deposit Insurance Corp. (FDIC) and any subdivision or component, if appropriate.

In item #5. List the name of the union and its subdivision or component as follows: e.g. Federal Employees Union, Local 23 or Government Workers Union, Western Joint Council.

In item # 6. Provide the area where the negotiation or mediation will most likely take place, with zip code, e.g., Washington, D.C. 20427. The zip code is important because our cases are routed by computer through zip code, and mediators are assigned on that basis.

In item # 7. Only the *approximate* number of employees in the bargaining unit and establishment are requested. The establishment is the entity referred to in item 4 as name of subdivision or component, if any.

In item # 8. The filing need only be sent by one party unless it is a request for grievance mediation. (See item 9.)

In item # 9. Please give the title of the official, phone number, address, and zip code.

In item #10. Both labor and management signatures are required for grievance mediation requests.

NOTICE

SEND ORIGINAL TO F.M.C.S.
SEND ONE COPY TO OPPOSITE PARTY
RETAIN ONE COPY FOR PARTY FILING NOTICE

[FR Doc. 92-15592 Filed 7-8-92; 8:45 am]
BILLING CODE 6732-01-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92-012]

52nd Annual National Sweepstakes Regatta, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The 52nd Annual National Sweepstakes Regatta is a powerboat race held on the Navesink River in Red Bank, New Jersey. This regulation temporarily amends the date of the event and is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the race. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: This regulation is effective from 8 am to 6 pm on July 18–19, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG E.G. Westerberg, project officer, Chief, Boating Safety Affairs Branch, First Coast Guard District and LCDR J. Astley, project attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. This temporary rule contains only a change of date from the permanent regulation. Insufficient time existed for the publication of an NPRM because questions regarding the exact location of the race course and date of the event were not resolved until May 29, 1992 due to concerns over interference with aids to navigation. The event is of such local popularity that delay or cancellation to provide for an NPRM would be against the public interest. Publishing an NPRM and delaying its effective date would also be contrary to public interest since immediate action is needed to respond to any potential hazards to the maritime public.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the boating public from possible dangers and hazards associated with high speed powerboat racing. A portion of the Navesink River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that portion of the Navesink River in Red Bank, NJ between the NJ Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the race course area and establish spectator anchorages for what is expected to be a large spectator fleet.

Regulatory Evaluation

This rule constitutes a temporary revision of the permanent regulations governing the running of the National Sweepstakes Regatta published in § 100.103 by changing the date of the race. The public is aware of the terms and conditions of this annual event. Due to infrequent commercial traffic on the applicable portion of the Navesink River, these regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Vessels will have sufficient advance notice to adjust their schedules around this event and traffic may be allowed to transit the regulated area at the discretion of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons cited in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that they will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination is available in the docket for inspection or copying where indicated under **"ADDRESSES"**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.103(b), is temporarily revised to read as follows:

§ 100.103 National Sweepstakes Regatta, Red Bank, NJ.

* * * * *

(b) Effective Period. This regulation is effective between the hours of 8 am and 6 pm, July 18–19, 1992.

* * * * *

Dated: June 29, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–15964 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD1 91–141]

Drawbridge Operation Regulations; Charles River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of the Metropolitan District Commission

(MDC), the Coast Guard has changed the regulations in § 117.591, paragraph (e), governing the Craigie Bridge over the Charles River at mile 1.0 between Boston and Cambridge, Massachusetts. The final rule establishes periods when advance notice for an opening is required and changes the days when the draw need not open during the morning and evening rush hours from Monday through Saturday to Monday through Friday. Additionally, the regulations for the Charles River have been changed to remove obsolete regulatory provisions, correct inconsistencies, and reflect physical changes that have occurred to the waterway.

EFFECTIVE DATE: This rule is effective on August 10, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are John McDonald, project officer, and Lieutenant Commander John Astley, project attorney.

Regulatory History

On December 24, 1991, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Charles River, in the **Federal Register** (56 FR 66609). The Coast Guard received seven letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Metropolitan District Commission (MDC), requested a change to the regulations for the Craigie Bridge, which presently opens on signal except during the morning and evening rush hours from 6:15 a.m. thru 9:10 a.m. and from 3:15 p.m. thru 6:30 p.m., respectively, excluding Sundays and holidays. The MDC and AMTRACK bridges have never observed the above closed periods on Saturdays and have requested that the regulation be changed to reflect the Monday through Friday closed periods which have been the actual operating policy. The MDC also has requested that commercial and recreational vessels be required to give 24 hours advance notice for bridge openings from December 1 to March 31. This request was made because of the limited number of openings during the winter months, and to relieve the bridge owner of the burden of having personnel constantly available to open the draw. Additionally, the present drawbridge regulations for the Charles River do not adequately reflect changed that have occurred since various portions of the regulations were instituted.

Discussion of Comments and Changes

Seven letters were received regarding the proposed rule. All seven letters objected to the Saturday closed periods during the morning and evening rush hours but all seven were in favor of all the other proposed changes to the regulations. The mariners, the MDC and AMTRACK were not aware that the existing regulation allowed for closed periods on Saturdays. The MDC and AMTRACK have requested that the Saturday closed periods be removed from the final rule; therefore, the closed periods for the morning and evening rush hours have been changed to Monday through Friday, except holidays.

Section 117.591, paragraph (a)(1), which gives the requirements for sound signals for bridge openings as two prolonged blasts followed by two short blasts, has been changed to comply with the sound signals required for an opening, as stated in § 117.15, which is one prolonged blast followed by one short blast. This change will eliminate this discrepancy.

Paragraph (a)(3), which refers to the level of the tide at the Charlestown Navy Yard, is being removed. The relocation and construction of the MDC Charles River Lock and Dam, at mile 0.5, makes the Charles River non-tidal in the area where these bridges are located.

Paragraph (f), which gives the operating hours for the Lechemere Canal Bridge, is being removed because the Lechemere Canal Bridge was replaced with a fixed bridge in 1986.

Paragraph (g), which gives the operating hours for the Broad Canal Bridges, and paragraph (h), which states that the draws of the Broad Canal Bridges need not open for the passage of vessels, contradict each other. Therefore, paragraph (g) will be removed. Paragraph (h) will be listed as new paragraph (f) in the revised regulation.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that the final rule will not prevent mariners from transiting the Craigie Bridge but will simply require advance notice for openings during the winter months.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the impact to be minimal on all entities because the final rule will not prevent mariners from transiting the Craigie Bridge but will simply require advance notice for openings during the winter months. Because it expects the impact to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this final rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

List of Subjects

33 CFR Part 117

Bridges.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.591 is revised as follows:

§ 117.591 Charles River and its tributaries.

(a) The following requirements apply to all bridges across the Charles River and it's tributaries:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (f) of this section, the draws shall open on signal.

(b) The draw of the Charlestown Bridge, mile 0.4 at Boston, need not be opened for the passage of vessels.

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA/Amtrak Bridge, mile 0.8, at Boston, shall open on signal; except that from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw need not be opened for the passage of vessels, except as stated in paragraph (a)(1) of this section.

(d) The draw of the Massachusetts Bay Transportation Authority (East Cambridge Viaduct) railroad Bridge, mile 1.0 at Boston, need not be opened for the passage of vessels. However, the operating machinery of the draw shall be maintained in an operable condition.

(e) The draw of the Metropolitan District Commission (Craigie) Bridge, mile 1.0 at Boston, shall operate as follows:

(1) Open on signal; except that from 6:15 a.m. to 9:10 a.m. and 3:15 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels, except as stated in paragraph (a)(1) of this section.

(2) From December 1 to March 31, the draw shall open on signal after a 24 hour advance notice is given.

(f) The draws of the bridges across Broad Canal, mile 0.0, need not open for the passage of vessels. However, the draws shall be returned to operable condition within one year after notification by the District Commander to do so.

3. Appendix A to part 117 is amended to add the entries for the Charles River under the State of Massachusetts between the listing for the Annisquam River and the Chelsea River, to read as follows:

Appendix A to Part 117—Drawbridges Equipped with Radiotelephones

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
• •	•	•	• •	•		
Massachusetts						
• •	•	•	• •	•		
Charles River	0.6	Charlestown	Charles River Dam, MDC	WHV 988	16	13
	1.0	Boston	Craigie, MDC	WHV 989	16	13
• •	•	•	• •	•		

Dated: June 29, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–15962 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–109]

Safety Zone; Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone around the U.S.S. *Constitution*, with the size of the zone varying depending upon prevailing conditions. This zone is needed to safeguard *Constitution* as an historic national maritime treasure and to protect other vessels and persons viewing *Constitution* waterside from the risk of collision, damage or personal injury due both to its limited maneuverability when underway and to the limited maneuvering room available in the vicinity of its berth. Implementation of this safety zone will enhance safe navigation in Boston Harbor by defining permanent operational parameters for public viewing of *Constitution* when it is underway or moored.

EFFECTIVE DATE: This regulation becomes effective August 10, 1992.

FOR FURTHER INFORMATION CONTACT: LCDR S. Garrity, Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR S. Garrity, Project Officer, Marine Safety Office Boston, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Regulatory History

On January 10, 1992, the Coast Guard published a notice of rulemaking entitled, "Safety Zone; Boston Inner Harbor, Boston, MA" in the **Federal Register** (57 FR 1141). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The country's oldest seagoing vessel, the U.S.S. *Constitution* is a treasured national monument. To protect the vessel, the Captain of the Port (COTP) Boston has routinely established a temporary moving safety zone around *Constitution* whenever underway in Boston Harbor.

Constitution's July Fourth Turnaround Cruise, the focal point of Boston's Harborfest celebration, is an annual event in Boston Harbor. At 10 a.m. on July Fourth, *Constitution* departs berth at Pier 1, Charlestown Navy Yard,

sometimes joined by other parade vessels, and proceeds outbound in the Boston Main Channel, Boston Inner Harbor. Once beyond Castle Island, *Constitution* and accompanying parade vessels turn and proceed inbound. At noon, when abeam Fort Independence, Castle Island, the *Constitution* fires a twenty-one gun salute honoring our nation's birthday. Following the salute, the U.S.S. *Constitution* and accompanying vessels return to their respective berths and moor by 2 p.m.

Experience has demonstrated that this annual event attracts large crowds of spectator vessels and creates significant congestion in Boston Harbor. The limited maneuverability of *Constitution* and other participating vessels while underway for this event poses a hazard for spectator vessels in the area, precipitating the need for a safety zone. A moving zone around the U.S.S. *Constitution* and other associated parade vessels during the event minimizes the chances of collision with other vessels by eliminating crossing or overtaking situations and helps to provide sufficient maneuvering room for participating vessels. It also minimizes disruption to other vessel traffic, as operators can schedule vessel movements before or after *Constitution's* transit.

In addition to this annual event, *Constitution* occasionally gets underway in Boston Harbor for special events. Like *Constitution's* July Fourth Turnaround Cruise, these events are well publicized and attract many spectator vessels, creating the similar need for a safety zone.

Accordingly, the COTP Boston is establishing a permanent moving safety zone for three hundred years in all directions around the U.S.S. *Constitution* and around each accompanying parade vessel whenever such vessels are underway in Boston Harbor.

Scheduled movements of the U.S.S. *Constitution* and the names and berthing locations of accompanying parade vessels will be published in the Local Notice to Mariners and in a Safety Marine Information Broadcast. During scheduled events, other marine traffic may not enter the moving safety zone without authorization from the COTP Boston.

While establishment of a moving safety zone around the *Constitution* when underway is a familiar practice in Boston Harbor, the COTP Boston, upon request, and after consultation with the Commanding Officer of the *Constitution*, agrees that additional action is necessary to protect the U.S.S. *Constitution* and the viewing public when the ship is moored. Numerous incidents have occurred where small pleasure craft and, on occasion, commercial tour boats have hazarded *Constitution* and themselves by almost colliding with the ship or becoming entangled in the rigging. Similarly, incidents involving lobster boats and the deployment of lobster traps have also occurred, threatening the safety of the vessel.

The Navy maintains records of such incidents and has begun recently to report them to the Coast Guard. A rise in the number of these incidents appears to be related to increases in the number of dinner and tour boats, and recreational vessel traffic operating in Boston Harbor. Vessel congestion in the vicinity of the Navy Yard becomes problematic during peak spectator periods. The most illustrative example of such activity occurs when many vessels gather near *Constitution* for evening colors. As vessels jockey for prime viewing locations, sometimes without regard for personal safety, they have closely endangered the U.S.S. *Constitution* and themselves by becoming fouled in the ship's rigging.

Lobster boats and lobstermen laying traps in the vicinity of *Constitution* have also created safety hazards. In November, 1991, an incident involving a lobster boat occurred in the waters near *Constitution*. Lobster traps and attending lines fouled the props of the arriving H.M.S. *Gloucester* as it was maneuvering toward its berth just ahead of *Constitution* at Pier 1, Charleston Navy Yard. The incident resulted in a near collision between *Constitution* and *Gloucester* and demonstrated the vulnerability of *Constitution* in its present berthing location.

To address these problems, the COTP Boston is establishing a permanent safety zone in the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard. The zone is necessary to ensure the safety of the *Constitution*, spectator craft gathering in the vicinity of the Navy Yard, and vessels mooring in proximity to *Constitution*. This regulation will help to prevent injury to the many waterside visitors who come to see *Constitution* when moored and will help to prevent damage to vessels and land structures in its immediate vicinity.

The provision of a permanent 50 yard safety zone around *Constitution* when *Constitution* is moored at a location other than Pier 1, Charlestown Navy Yard, provides an equivalent level of protection on those rare occasions when the ship is moored at a site other than Pier 1, Charleston Navy Yard.

Discussion of Comments and Changes

No written comments were received during the comment period. Accordingly, the text of these regulations appears as it did in the notice of proposed rulemaking.

Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard received no written comments relating to this section, and as noted above, the regulatory text remains unchanged. As stated in the notice of proposed rulemaking, these regulations provide for public access to waterside viewing of *Constitution* for recreational and commercial tour vessels. Denying access to fishermen in the small area of water between Hoosac Pier and Pier 1, Charlestown Navy Yard does not adversely affect their operations since the rest of Boston Harbor is available to them for locating an alternate site. The theory and practice of establishing a safety zone to protect *Constitution* and accompanying parade vessels underway in Boston Harbor have been in effect for many years. The establishment of a safety zone around *Constitution* when moored is consistent with the purpose of promoting safety while at the same time allowing reasonable levels of public waterside access to the vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered the economic impact of these regulations on small entities. The Coast Guard received no written comments to indicate that this rulemaking would have a significant economic impact on a substantial number of small entities. Accordingly, the regulatory text of the final rule has not changed. These regulations only slightly modify the procedure for public waterside viewing of *Constitution*, and small tour boat companies operating in Boston Harbor are provided the same business opportunity as before in conducting sightseeing tours of *Constitution*. Similarly, lobstermen are provided limitless suitable alternative sites in Boston Harbor to conduct their operations. Regardless of whether *Constitution* is underway or moored, no adverse economic impact will result from this rulemaking. Therefore, the Coast Guard certifies under 5 U.S.C.

605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No written comments relating to this section were received, and the regulatory text remains unchanged.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.C of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. In fact, implementation of this rulemaking should help to preserve a national historic landmark and to protect the environment, reducing the risk of collision or other accidents. The Coast Guard received no written comments relating to this section. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Latest research and record keeping, Security measures, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.111 is added to read as follows:

§ 165.111 Safety Zone: Boston Harbor, Boston, Massachusetts.

(a) The following areas are established as safety zones during the conditions specified:

(1) Around the U.S.S. *Constitution* or any accompanying parade vessels when *Constitution* is under way—300 yards in all directions in the waters around the U.S.S. *Constitution* and each parade vessel accompanying *Constitution* whenever the U.S.S. *Constitution* is underway in Boston Harbor from the time such vessels depart their respective berths until the time they complete their transit and are safely moored.

(2) Whenever *Constitution* is moored at Pier 1, Charlestown Navy Yard—the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard, from the imaginary line connecting the outer easternmost point protruding into Boston Harbor from Hoosac Pier to the outer westernmost point protruding into Boston Harbor from Pier 1, Charlestown Navy Yard, extending inbound along the face of both piers to the landside points where both piers end.

(3) Around the U.S.S. *Constitution*—fifty yards in all directions in the waters around *Constitution* when the vessel is moored at any Boston berthing location other than Pier 1, Charlestown Navy Yard.

(b) The general regulations governing safety zones as contained in 33 CFR 165.23 apply.

Dated: June 26, 1992.

W.H. Boland, Jr.,

Captain, Coat Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 92–15963 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 201, 204, 205, 232, 233, 301, and 1355

RIN: 0970–AA69

Aid to Families With Dependent Children; Related AFDC Amendments of the Family Support Act of 1988

AGENCY: Administration For Children And Families, HHS.

ACTION: Final rules.

SUMMARY: These final rules implement five sections of the Family Support Act of 1988 (Pub. L. 100–485) that impact on the administration of the Aid to Families With Dependent Children (AFDC) program. They are:

(1) Section 401, which requires all States to provide benefits to families eligible for AFDC due to the unemployment of a parent who is the principal earner;

(2) Section 402, which increases the amount of the standard work expense disregard to $90; increases the limit on the dependent care disregard to $175 ($200 for children under two); changes the order of the earned income disregards so that the dependent care disregard is applied last; and adds a disregard for earned income tax credit payments;

(3) Section 403, which permits States the option to require an individual under age 18 who has never married and has a dependent child in his or her care (or who is eligible for AFDC as a pregnant woman) to reside in the residence of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement such as a foster home or maternity home in order to receive AFDC;

(4) Section 601, which authorizes the government of American Samoa to operate programs under title IV of the Social Security Act; and

(5) Section 604, which provides that State agencies are responsible for assuring that benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner and further provides that the State agency shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations.

The final rules also implement three sections of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), Public Law 101–508, which make certain clarifying or technical changes to various amendments made by the Family Support Act. They are:

(1) Section 5061, which repeals the penalty language that rendered the entire family ineligible for the Aid to Families With Dependent Children-Unemployed Parent Program (AFDC–UP) if the principal earner failed to participate in the JOBS program or, if exempt because of remoteness, failed to register with the public employment office in the State;

(2) Section 5062, which allows participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC–UP eligibility; and

(3) Section 11115, which excludes EITC payments from consideration as income when determining a family's eligibility under the 185 percent gross income limitation, excludes EITC payments from consideration as a resource in the month of receipt and the following month, and permits States to waive any overpayments that occurred because receipt of an EITC payment during the period January 1 through December 31, 1990, caused a family to be ineligible under the 185 percent gross income limitation.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Timing of Regulation

On August 22, 1990, we published a Notice of Proposed Rulemaking in the Federal Register relating to changes required by the Family Support Act of 1988. (See 55 FR 34294–34305)

Discussion of Statutory Provisions

The Family Support Act of 1988, Public Law 100–485, revises the AFDC program to promote self-sufficiency by placing greater emphasis on work, child support, and family benefits. A major provision of the Family Support Act amends title IV of the Social Security Act (hereinafter "the Act") to add a new Part F, the Job Opportunities and Basic Skills Training (JOBS) Program. The purpose of JOBS is to assist needy families with children to obtain the education, training and employment needed to avoid long-term welfare dependence. Final regulations to implement JOBS were published separately on October 13, 1989 (54 FR 42146 (1989)).

Additionally, the Family Support Act makes several amendments to title IV, part A of the Act, Aid to Families With Dependent Children. A major amendment is the requirement that all States implement an AFDC–UP program to provide AFDC on the basis of a child's dependency being due to the unemployment of the child's parent who is the principal earner, although under certain circumstances, a State may time-limit cash assistance under the program.

These final rules implement five sections of the Family Support Act, and three sections of the Omnibus Budget Reconciliation Act of 1990 which include technical changes to certain amendments made by the Family Support Act. The following is a summary of the changes implemented by the regulations.

Mandatory Coverage of Children Deprived Due to the Unemployment of a Parent

Section 401 of the Family Support Act amended section 402(a) of the Social Security Act by adding a new section 402(a)(41). The new section requires States to provide AFDC to children who are under 18 (or at State option under 19 and in school) and deprived of parental support or care by reason of the unemployment of the parent who is the principal earner. Section 401 was effective October 1, 1990, for all States other than Puerto Rico, American Samoa, Guam, and the Virgin Islands, where it is effective October 1, 1992. Section 401 further provides that States beginning the AFDC–UP program may elect a time limitation for cash assistance under which the State may deny cash assistance if the family received AFDC–UP cash assistance in six of the preceding twelve months. States electing the time-limited option must provide a program of education, training, and employment services throughout the year and continue Medicaid to family members during the months cash assistance is not paid. States operating an AFDC–UP program on September 26, 1988, must continue to operate the program without a time limitation.

Increased Limit on Dependent Care Disregard

Section 402(a) of the Family Support Act amended section 402(a)(8)(A)(iii) of the Social Security Act by increasing the limit on the dependent care disregard from $160 to $175 for children age two or above and for incapacitated adults, and to $200 for children under age two. In addition, the order of the earned income disregards is changed so that the dependent care disregard is applied last. This provision was effective October 1, 1989.

Increased Standard Work Expense Disregard

Section 402(b) of the Family Support Act amended section 402(a)(8)(A)(ii) of the Social Security Act by increasing the amount of the standard work expense disregard from $75 to $90. This provision was effective October 1, 1989.

Earned Income Tax Credit Disregard

Section 402(c)(1) of the Family Support Act amended section 402(a)(8)(A) of the Social Security Act by adding a new clause (viii) which provides that earned income tax credit (EITC) payments shall be disregarded. This disregard applies to any advance EITC payment made to a family by an employer and any EITC payment made as a refund of Federal income taxes. This provision was effective October 1, 1989. Action Transmittal No. FSA–AT–89–54 (November 22, 1989), as clarified by Action Transmittal No. FSA–AT–90–3 (March 3, 1990), advised States that any advance EITC payment made to a family, and any EITC payment made as a refund of Federal income taxes must be disregarded for AFDC purposes, except that they must be counted as income when determining a family's eligibility under the 185 percent gross income limitation at § 233.20(a)(3)(xiii).

Section 402(c)(2) of the Family Support Act repealed section 402(d) of the Act, which required States to consider EITC payments as earned income.

Households Headed by Minor Parents

Section 403 of the Family Support Act amended section 402(a) of the Social Security Act by adding section 40 (a)(43). Section 402(a)(43) provides that States are permitted, under certain situations, to require as a condition of eligibility that an individual under age 18, who has never married and has a dependent child in his or her care, live at the residence of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement such as a foster home or maternity home. This provision was effective January 1, 1990.

Authorization for American Samoa to Participate in the AFDC Program

Section 601 of the Family Support Act authorized American Samoa to have an AFDC program. This provision was effective October 1, 1988.

Responsibilities of the State

Section 604 of the Family Support Act amended section 402(a) of the Social Security Act by adding section 402(a)(44), which provides that the State agency is responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner. This section further provides that the State agency shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and that they are notified of the paternity establishment and child support services for which they may be eligible. These provisions were effective July 1, 1989.

Legislative Clarifications Subsequent to Publication of the Proposed Regulations

Subsequent to publication of the proposed regulations, Congress passed and the President signed Public Law 101–508, The Omnibus Budget Reconciliation Act of 1990. The provisions of OBRA–90 discussed below include clarifying and technical amendments to certain sections of the Social Security Act which were previously amended by the Family Support Act of 1988.

Technical Amendments to the AFDC–UP Program

Corrections Regarding Penalty for Failure to Participate in the JOBS Program

Section 5061 of OBRA–90 amended section 407(b)(1)(B) of the Social Security Act to provide that if the principal earner or spouse fails without good cause to participate or be available for participation in the JOBS program as required or, if exempt because of remoteness (or because the State does not have a JOBS program in which he or she can effectively participate), fails to register with the public employment office in the State, the needs of that individual will not be taken into account in determining the amount of the family's AFDC benefits. If the spouse is not participating or fails to register with the public employment office, the needs of the spouse will also not be taken into account. The penalty does not apply to benefits on behalf of any child in the family.

This amendment clarifies the Social Security Act by repealing the penalty language in section 407 that rendered the entire family ineligible for AFDC–UP if the principal earner failed to participate in the JOBS program or, if exempt because of remoteness, failed to register with the public employment office in the State.

Section 5061 is effective with respect to any State IV–A agency as of the date that such agency had an approved JOBS plan under § 250.20.

Correction Regarding AFDC–UP Eligibility Requirements

Section 5062 of OBRA–90 amended section 407(d)(1) of the Social Security Act to allow participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC–UP eligibility.

Prior to October 1, 1990, participation in WIN and CWEP was included in the definition of "quarter of work" for purposes of establishing eligibility for AFDC–UP. Section 401 of the Family Support Act of 1988 amended the definition of "quarter of work" to include participation in JOBS, but deleted references to WIN and CWEP. The result was that beginning October 1, 1990, prior participation in WIN and CWEP would not have counted toward the "quarter of work" requirement for purposes of establishing eligibility for AFDC–UP.

Technical Amendments to the Earned Income Tax Credit (EITC) Disregards

These amendments were effective January 1, 1991.

Clarification Regarding the Resources Disregard

Section 11115(a)(1) of OBRA–90 amended section 402(a)(7)(B) of the Social Security Act by adding a new clause (iv) to exclude the EITC from consideration as a resource for the month of receipt and the following month.

Clarification Regarding the Income Disregard

Section 11115(a)(2) of OBRA–90 amended section 402(a)(18) of the Social Security Act to exclude the EITC from consideration as income when determining a family's eligibility under the 185 percent gross income limitation.

The Family Support Act changes related to the EITC did not amend section 402 (a)(18) of the Social Security Act which denies AFDC eligibility to a family whose total income exceeds 185 percent of the State's need standard for a family of the same composition. Consequently, the EITC disregard provided under the Family Support Act did not apply to this determination.

Waiver of Overpayments

Section 11115(d) of OBRA–90 provides that for purposes of section 402(a)(18) of the Social Security Act, a State may waive any overpayment of aid that resulted from the receipt by a family of an EITC payment during the period beginning on January 1, 1990, and ending on December 31, 1990. An EITC payment is any refund of Federal income taxes made to a family by reason of section 32 of the Internal Revenue Code of 1986, and any advance payment made to a family by an employer under section 3507 of such Code.

Justification for Dispensing With a Notice of Proposed Rulemaking Regarding Changes Made to the Regulations to Implement the Omnibus Budget Reconciliation Act of 1990

Sections 5061, 5062 and 11115 of OBRA–90 are technical and the regulations implementing these sections do not involve administrative discretion but simply implement statutory requirements. Accordingly, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is not necessary.

Discussion of Regulatory Provisions and Responses to Comments

We received 37 letters of public comment regarding the proposed regulations. The respondents include 30 State agencies, one Federal agency, one Indian tribe, three advocacy organizations, and two legal assistance organizations.

Following is a discussion of the regulatory provisions, the comments and our responses, and the rationale for any changes from the proposed regulations. Further, we have made changes to correct minor omissions and typographical errors as a result of our review of the proposed regulations.

Mandatory Coverage of Children Deprived Due to the Unemployment of a Parent (§ 233.101 of the Final Regulations)

Prior to the Family Support Act, under the AFDC–UP program States could provide assistance to needy children deprived of parental support by reason of the unemployment of a parent. At the time the Family Support Act was enacted in October 1988, 27 States, the District of Columbia, and Guam had established such programs. Section 401 of the Family Support Act requires that all States (other than Guam, Puerto Rico, the Virgin Islands and American Samoa) include AFDC–UP in their AFDC programs by October 1, 1990. Guam, Puerto Rico, the Virgin Islands and American Samoa must do so by October 1, 1992. This expansion of the program, together with the concomitant work requirements encompassed in the new JOBS program, promotes a fundamental welfare objective to maintain family stability and move recipients from dependence to self-sufficiency.

Section 401 of the Family Support Act provides that a State:

- May design its AFDC–UP program to reflect the State's individual needs and to emphasize education, training, and employment services.
- May count certain educational or vocational activities for the purpose of fulfilling the "quarters of work" requirement of the AFDC–UP program.
- May require at least one parent to participate in JOBS program activities and may make the payment of cash assistance after the performance of assigned activities.
- May establish a time limit for providing cash assistance under the AFDC–UP program, but may not deny assistance unless the family has received aid in at least 6 of the preceding 12 months. (Applies only to

States not operating AFDC–UP on September 26, 1988).

• May not time limit AFDC–UP cash assistance unless it provides a program of education, training and employment services to help the unemployed parents prepare for and obtain employment.

• Must provide Medicaid to family members who do not receive cash assistance due to the time limitation.

We are implementing these provisions by adding a new § 233.101. Section 233.101 is identical to current regulations at § 233.100, as they were amended by the final JOBS rules, except that it additionally implements the provisions of section 401 of the Family Support Act. We have also revised the regulatory language affected by the technical provisions of OBRA–90 as previously discussed.

JOBS and the AFDC–UP Program

Title II of the Family Support Act also added a new part F to title IV of the Social Security Act to require States to establish a program of education, training and employment services which is geared toward labor market demands and which provides individuals with marketable skills. This program, the Job Opportunities and Basic Skills Training (JOBS) Program, applies to AFDC families.

Section 201 of the Family Support Act provides that States:

• Must require at least one parent in each AFDC–UP family to participate for a minimum of 16 hours per week in a work supplementation program, a community work experience or other work experience program, on-the-job training, or an approved State work program.

• May substitute participation in an educational activity for the required work activity for parents under age 25 who have not completed high school.

• May require both parents in an AFDC–UP family to participate in a JOBS program if the State guarantees child care. However, if the State determines that only one parent should participate in a JOBS program, child care is not required to be provided.

• Must meet a Federal standard, ranging from 40 percent of the AFDC–UP caseload in FY 1994 to 75 percent in FY 1997, for the number of AFDC–UP recipients required to participate for a minimum of 16 hours per week in a work activity.

• May receive a waiver from this standard if the State operates a JOBS program in conformity with the statute and has made a good faith effort to comply, but has been unable to do so.

Final regulations to implement these requirements were published in the Federal Register on October 13, 1989 (54 FR 42146 (1989)).

Mandatory Expansion of AFDC–UP Coverage

Under prior law, States had the option of providing assistance to two-parent families when the parent who is the principal earner was unemployed. Section 401(a) of the Family Support Act added new paragraph (a)(41) to section 402 of the Social Security Act and amended section 407(b) of the Act to require all States to have an AFDC–UP program. We are adding a new § 233.101 to implement this new provision.

Comment: We received comments from seven State agencies and one organization on § 233.101(a)(5) regarding sanctions for nonparticipation in JOBS activities. Several commenters strongly suggested reconciling conflicting policies for the application of sanctions under sections 402 and 407 of the Social Security Act. Section 402 applies the sanctions for nonparticipation in JOBS to the principal earner (PE) and sometimes the spouse, whereas section 407 denies AFDC to all members of the AFDC family (including a dependent child) as long as the child's parent who is the PE is not participating in JOBS.

One commenter suggested that we seek a technical amendment to the Act in order to reconcile the different policies for sanctioning an individual as set forth in section 402 versus sanctioning the entire family under section 407.

Response: The Family Support Act of 1988 amended section 402(a)(19) of the Social Security Act to provide that if the principal earner fails without good cause to participate in the JOBS program, the needs of that individual will not be taken into account in determining the amount of the family's AFDC payment. If the spouse is not participating, the needs of the spouse will also not be taken into account. Payments would continue to all other eligible family members. When this new sanction language was added to section 402, the language contained in section 407 of the Social Security Act, which denied aid to the entire family for the failure of the principal earner to participate in JOBS (or to register with the State employment office if exempt due to remoteness), was not changed.

Section 5061 of OBRA–90 eliminated this inconsistency by removing the sanction language in section 407 of the Social Security Act that provides for the denial of aid to the entire family and replacing it with language which makes the sanctions consistent under both sections 402 and 407 of the Social Security Act.

Accordingly, we are modifying the proposed regulations at § 233.101(a)(5)(i) to reflect these statutory amendments.

Comment: One State agency objected to participation in a JOBS component as a requirement under AFDC–UP because State resources would be severely strained.

Response: We have no authority under the statute to eliminate this requirement. The AFDC–UP participation requirement is set forth in sections 403(1)(4)(A)(i) and 407(b)(1)(B) of the Social Security Act. We must also reiterate that flexibility in implementing the AFDC-UP participation requirement was permitted under the final JOBS rules published on October 13, 1989. In response to similar comments made at that time, we said that States with approved JOBS plans have the option to either phase-in the unemployed parent 16-hour work requirement provisions for participation rate purposes or serve the unemployed parents under the regular JOBS program requirements (see 54 FR 42170).

We further encouraged States to implement programs which incorporated the AFDC–UP requirements as early as possible in order to provide consistency of services and thereby assist these unemployed parents in achieving self-sufficiency (see 54 FR 42171).

Comment: Another commenter suggested treating refusal of employment or training as a JOBS participation issue rather than as a sanction under AFDC–UP.

Response: For applicants, it is neither. Section 407(b)(1)(A)(ii) of the Act clearly requires, as an initial condition of eligibility for AFDC–UP, that a principal earner must *not*, without good cause, have refused a bona fide offer of employment or training for employment within the 30-day period prior to the receipt of assistance. Thus, a failure to meet this condition means that the family is not eligible for assistance. However, once payment is issued, the principal earner's refusal of a bona fide offer of employment or training under JOBS becomes a JOBS participation issue that must be handled in accordance with §§ 250.34, 250.35 and 250.36.

Comment: We received comments from one organization and four States regarding implementation of the AFDC–UP program under proposed § 233.101(a). Four commenters requested that we allow a "grace period" for phase-in of AFDC–UP. One commenter further recommended that the final rules implementing AFDC–UP be consistent with the final rules implementing the JOBS program and therefore allow

States to phase-in the AFDC-UP program.

Response: Section 401 of the Family Support Act provides that States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) must have an AFDC–UP program effective October 1, 1990. Puerto Rico, American Samoa, Guam, and the Virgin Islands have until October 1, 1992. Accordingly, the AFDC–UP program must be implemented on a statewide basis by the appropriate effective dates. Although States had the option of establishing a JOBS program as early as July 1, 1989, section 482(a)(1)(D)(i) of the Social Security Act, as added by the Family Support Act of 1988, specifies that States have until October 1, 1992, to provide a JOBS program statewide. However, the portion of the Family Support Act governing the AFDC–UP program does not permit such latitude.

Comment: One commenter recommended that States not be mandated to evaluate all current AFDC families for AFDC–UP eligibility, but rather be required to explain the provisions of the AFDC–UP component to them and evaluate eligibility only if assistance is requested.

Response: We disagree with the comment that State agencies should only be required to evaluate those current recipient households who specifically request AFDC–UP assistance. Permitting such a practice would contravene the standard filing unit rule as set forth in section 402(a)(38) of the Social Security Act and the implementing Federal regulations at § 206.10(a)(1)(vii). That rule requires that in order for a family to be eligible for AFDC, an application must include the parent(s) of a dependent child and certain siblings who are dependent children. Of particular importance is the need to accurately determine household composition, income, and whether any adult household members are parents as defined at § 233.90(a)(1).

Comment: The commenters also expressed concern that the regulations do not address the impact of AFDC–UP on the standard filing unit rule at section 402(a)(38) of the Social Security Act.

Response: With regard to implementation of the standard filing unit rule, State agencies must determine the need of and the amount of benefits for a dependent child and his parent together if they are living in the same home. "Parent", as defined in the Federal regulations at § 233.90(a)(1), only includes a natural or adoptive parent or a stepparent in States with laws of general applicability. Stepparents in States without such laws of general applicability or putative parents do not meet the definition of "parent".

Comment: Several State agencies requested a 6 to 12 month quality control (QC) moratorium on implementation errors.

Response: States were notified on September 21, 1990, by FSA Action Transmittal No. FSA–AT–90–24 (QC-QCM 2/88–26) that we had instituted modified quality control procedures for a period of one year (i.e., October 1, 1990, to September 30, 1991). This moratorium applies only to those States that did not have an AFDC–UP program in effect on September 26, 1988, and has been instituted to afford States relief from atypical QC error rates in the AFDC program that may be associated with implementing the provision.

Modified procedures will apply to States with an AFDC–UP program in effect on September 26, 1988, only if the State elects the pay after performance provision for AFDC–UP recipients who are JOBS participants. For those States that amend their AFDC–UP plans to elect this option, modified procedures will only apply to this aspect of their program.

Comment: One State agency had concerns regarding the 100-hour rule as provided in proposed § 233.101(a)(1). According to the proposed regulation, States must define an unemployed parent in relation to the number of hours the parent is working. The State feels that since the employment determination is to be based on the expected circumstances of the principal earner, the final rule should specify that no overpayment will be assessed if the expected hours of employment are exceeded. The rationale is that the family was eligible and the regulatory requirements were met when the payment was issued.

Response: The "100-hour rule" is not a new regulation. By authority of the Social Security Amendments of 1967 (Pub. L. 90–248), section 407(b)(1)(A)(i) of the Social Security Act gives the Secretary broad discretion to prescribe standards for determining when a principal earner has not been employed during the 30-day period prior to the receipt of AFDC–UP benefits. The "100-hour rule" is one application of the Secretary's discretion. This provision has been included in the AFDC–UP definition of employment at 45 CFR 233.100(a)(1) since 1971.

With regard to the suggestion that overpayments be waived when the expected monthly hours of employment exceed 100 hours, the current regulations at § 233.100(a)(1)(ii) and our final regulations at § 233.101(a)(1)(ii) permit eligibility to continue if the 100 hours are exceeded because the work is intermittent and the excess is of a temporary nature. Accordingly, we do not believe that additional flexibility in this area is warranted.

Comment: Section 233.101(a)(3)(i) states that the principal earner must have been unemployed for at least 30 days prior to the receipt of AFDC–UP. One State agency commented that it was unclear whether this means 30 days prior to the receipt of aid, or that the principal earner must have been unemployed for 30 days prior to each month for which payment would be made. If the latter is true, the State recommended that the wording be changed to "30 days prior to the month of eligibility."

Response: The commenter is concerned about the provision at proposed § 233.101(a)(3)(i) which requires that the principal earner must have been unemployed for 30 days. We interpret this provision as one period of time, rather than ongoing, as measured from the first day of the period that is covered by the first assistance check.

Comment: A commenter suggested that since the AFDC "voluntary quit" provision under § 233.101(a)(3)(ii) only covers 30 days prior to the application date and the Food Stamp program covers 60 days for the same period, conformity on the time period would be desirable.

Response: The commenter is concerned about the AFDC provision which makes a family ineligible if the principal earner has voluntarily refused an offer of a job or training for a job in the 30 days prior to receipt of benefits. Whenever it is legally permissible and practicable, we have attempted to make certain AFDC program requirements more consistent with those of the Food Stamp program. However, since the requirement in § 233.101(a)(3)(ii) is set forth in section 407(b)(1)(A)(ii) of the Social Security Act, we are not able to conform the time periods.

In this connection, we note that the recently enacted amendments to the Food Stamp Act of 1977 contain a provision for an Advisory Committee on Welfare Simplification and Coordination (see section 1778 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624)). Members would include individuals experienced in administering the Food Stamp program, cash and medical assistance programs for low-income families under the Social Security Act, and programs providing housing assistance to needy families, as well as individuals who are recipients and individuals representing recipient

advocacy organizations associated with such programs, and would be appointed by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development. One of the major purposes of the committee is to recommend common or simplified programs and policies (including recommendations for changes in law, regulations, and administrative practice and for policies that do not currently exist in welfare programs) that would substantially reduce difficulties in applying for and obtaining benefits from more than one program and significantly increase the ability of administrators of such programs to efficiently provide timely and appropriate assistance to those eligible for more than one type of assistance. The commenter's suggestion will be considered in the context of this committee.

Comment: One commenter suggested that the IV–A agency or, at State option, the State Employment Service (SES) make the determination that a job offer was bona fide or that refusal was with good cause. Allowing the IV–A agency to do so would simplify the administration of the program and might reduce unnecessary delays in providing assistance. Additionally, the IV–A agency might have information relevant to the determination not available to the SES.

Response: Pursuant to section 402(a)(3) of the Social Security Act, the title IV–A single State agency is to administer the State's title IV–A State plan or supervise administration if the counties administer the plan. Accordingly, we have revised the final regulations to make such a determination a IV–A agency responsibility. However, the agency is still free to accept SES recommendations regarding bona fide job offers and good cause refusals of job offers.

Comment: Section 233.101 (a)(3)(iii) requires the principal earner to meet the 6-of-13 quarters-of-work requirement within the specified period prior to the application for assistance. One State expressed the wish to be allowed some latitude in implementation of this regulation on the basis that families who applied and were eligible for medical aid at an earlier time should automatically be deemed eligible to receive AFDC–UP assistance as of October 1, 1990. The State felt that this would better serve the most needy families by allowing them the opportunity to participate in the JOBS program.

A similar comment was received from an Indian Tribe which expressed strong opposition to the proposed rules of the Family Support Act of 1988, specifically opposing the proposed "connection with the work force" eligibility criteria. The Tribe stated that because of economic distress and high unemployment rates, the Reservations do not have the economic resources to provide employment opportunities for AFDC–UP parents that would provide them with qualifying quarters of coverage. Additionally, many AFDC–UP applicants would be unable to qualify by participation in training programs because of geographical isolation, lack of transportation and inadequate dependent care.

Response: The statute clearly delineates the requirements for AFDC–UP eligibility such that the principal earner must have 6 or more quarters of work in any 13-calendar-quarter period ending within one year prior to the application for such aid and defines what constitutes quarters of work. (See the following section entitled Participation in Training and Education Programs as a Quarter of Work which discusses the options available to States for counting education and training as a quarter of work.)

Time Limitation on AFDC–UP Cash Assistance

Congress provided that States which did not have an AFDC–UP program in operation on September 26, 1988, may elect to limit the period of time that they provide cash assistance. Section 401(b) of the Family Support Act adds a new section 407(b)(2)(B) to the Social Security Act that allows a time limitation "to the extent determined appropriate by the State for the operation of its program under this section." We are implementing this amendment by adding a new § 233.101(b)(3).

However, section 407(b)(2)(B)(ii)(II) of the Social Security Act provides that a State may not limit cash assistance unless the family has received assistance in at least six of the preceding twelve months. Since families making initial application for AFDC–UP cash assistance on or after October 1, 1990, will not have met this condition, these States will have to provide AFDC–UP cash assistance to such eligible AFDC–UP applicant families for the month of application and the next five consecutive months. Thereafter, the State may choose to deny assistance, as provided in this section, until such month as the family has once again not received assistance in six of the preceding twelve months.

The following example illustrates this provision. A family applied for AFDC–UP for the first time on October 1, 1990, in a State which elected to limit assistance to the maximum extent allowed under this provision. If the State begins assistance payments with the date of application, then this family, if eligible, must receive AFDC–UP from October 1, 1990, through March 31, 1991. The State may deny assistance beginning April 1 because the family had received six months of assistance (October 1, 1990, through March 31, 1991) of the preceding twelve months (April 1, 1990, through March 31, 1991). If the family is still eligible, the State must resume cash assistance, if requested, under the AFDC–UP program no later than November 1, 1991, the first month that the family had not received assistance in six of the preceding twelve months.

This rolling six-month window may create an administrative burden for families that have had intermittent assistance totaling six months over the past twelve months. However, we were unable to design an alternative to this approach that would not conflict with the statutory requirements when a State decides to have a time-limited program.

The Act does not specify that the family must meet all AFDC eligibility requirements during months denied assistance due to the time limitation in order to resume assistance. Thus, in the above example, if the family had excess income during the months of June and July, the State must count these two months as time limitation months and must resume assistance in November, provided that the family meets all the eligibility requirements at that time and files an application for assistance. However, in order to resume assistance, the family must file a new application, and the "connection with the work force" test, discussed below, would therefore apply. See section 407(b)(I)(A)(iii)(I) and section 407(b)(2)(B)(ii)(III) of the Act.

Section 407(b)(2)(B)(ii)(II) specifies that the time limitation is based solely on assistance provided by reason of the unemployment of the parent. Thus, months in which the family received assistance due to the death, continued absence, or incapacity of a parent do not count in the time limitation formula. To illustrate, if the family in the preceding example received assistance by reason of the incapacity of a parent for the months of August and September 1991, these two months will not count in any subsequent month for the purpose of determining the time limitation for AFDC–UP. As in the above example, the

State must resume assistance under the AFDC–UP program no later than November 1991.

The State agency needs to ensure that AFDC–UP recipients are informed that their eligibility for AFDC–UP cash assistance is time-limited. For this reason, we are adding certain notification requirements at § 233.101(b)(3) for AFDC–UP applicants and recipients. First, we are requiring that the State notify an AFDC–UP family at the time of application that cash assistance will terminate due to a time limitation and that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the regular AFDC program during the period that the family does not receive AFDC–UP cash assistance. In addition, we are requiring States to notify the applicant family of the availability of programs of education, training and employment services, as discussed in the section headed Program of Education, Training, and Employment, which prepare the family to be self-supporting.

Second, we are requiring the State to notify an AFDC–UP recipient family of the earliest month that they could receive AFDC–UP again. This notification may be part of the notice of proposed action which is required prior to termination pursuant to § 205.10(a)(4). To receive assistance again, the family must make a new application.

The Family Support Act also added a new section 407(b)(2)(B)(ii)(III) to the Social Security Act, which provides that, for purposes of meeting the "connection with the work force" test, i.e., that the family have six or more quarters of work in any 13-calendar quarter period ending within one year prior to the application for AFDC–UP, States must consider otherwise eligible families as AFDC–UP recipients for any months that they do not receive assistance solely by reason of the time limitation. The effect of this provision is that a parent who met the "connection with the work force" test at the time of his or her original application for AFDC–UP will be deemed to meet this test again for a reapplication filed during the month that the time limitation ends or in the month following the month that the time limitation ends. An exception to this deeming rule occurs when the family does not meet one of the eligibility requirements during the period it was not receiving AFDC–UP (e.g., the family received excess income for one or more months during that period). In such situations, the deeming rule cannot be applied at reapplication. The actual quarters of work (as defined in section 407(d)) must be computed to determine whether the test has been met. We are adding a new § 233.101(b)(3)(viii) to implement this provision.

The Social Security Act does not contain a similar provision for a family which qualifies for AFDC–UP under the alternative to the "connection with the work force" test provided by section 407(b)(1)(A)(iii)(II), i.e., where the principal earner received, or was qualified to receive, unemployment compensation within one year prior to the application for AFDC–UP. As a consequence, for families eligible for time-limited AFDC–UP based initially on eligibility for unemployment compensation, a subsequent period of AFDC–UP eligibility must be based on subsequent receipt or qualification for unemployment compensation, or based on quarters of work (which includes (among other things) JOBS participation or, at State option, certain other education and training).

Many families meet both tests at the time of application for AFDC–UP, and authorization is often based on whichever test is documented first. Such families are actually eligible for AFDC–UP under both tests, and, therefore, would meet the "connection with the work force" test under section 407(b)(2)(B)(ii)(III). Accordingly, States should review the case files of families which were originally authorized to receive AFDC–UP assistance because the principal earner met the requirements of section 407(b)(1)(A)(iii)(II) to determine whether he or she also had the necessary quarters to meet the "connection with the work force" test in section 407(b)(1)(A)(ii)(III). If so, the family will be deemed to meet section 407(b)(1)(A)(ii)(III) upon reapplication.

Comment: There was considerable interest in the issue of States extending time-limited AFDC–UP on an individual basis. Several State agencies expressed interest in being able to do so when the principal earner is satisfactorily participating in an education or training activity, but may not be scheduled to complete the activity until after the time-limited assistance is terminated. They stressed that such exceptions would allow assistance to be extended during the time it took for the principal earner to complete education/training programs, would be based on statewide criteria reflected in the State's IV–A plan, and could mean the difference between unsubsidized employment and dependence on public assistance.

Response: We recognize the States' concerns with respect to allowing a principal earner to complete an activity which is not scheduled to terminate when his or her time-limited assistance will conclude. However, it is a question of equity of treatment between those fortunate enough to have a training program approved and those who have not, either through timing or accessibility. Under these circumstances, allowing cash benefits to continue to some individuals would result in inequitable treatment under 45 CFR 233.10(a)(1). Therefore, cash benefits may not be extended past the time limit; however, if the principal earner is participating in a JOBS component activity at the time that the time limit expires, the principal earner may complete that activity.

Comment: Two of the commenting organizations expressed concern that the regulations do not require States to determine whether a family about to lose AFDC–UP due to the time limitation has any other basis for continuing eligibility for assistance before termination of benefits, despite the fact that a significant number of families return to regular AFDC rolls when AFDC–UP terminates. They recommended that the final rules require the State agency to review each AFDC–UP case that is to be terminated to determine whether there is an alternative basis for continuing AFDC before the time limit termination.

Response: The preamble to the proposed regulation emphasizes that AFDC–UP applicants need to be informed at the time of application that their eligibility for cash assistance is time-limited (see 55 FR 34296, column 3). In the final rules, we are requiring that States notify AFDC–UP families at the time of application that cash assistance will terminate due to a time limitation and that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the regular AFDC program during the period that the family does not receive AFDC–UP cash assistance. Secondly, we are requiring that States notify an AFDC–UP recipient family of the earliest month that they could receive AFDC–UP again.

We feel that this is a significant requirement for States to meet. We will monitor implementation to determine the appropriateness of further regulation in this area.

Comment: Another issue raised by a number of organizations and State agencies is the method used to determine the six months of time-limited

assistance. The question has arisen as to whether the month of application, for which the family may receive a reduced, pro-rata payment, counts as the first month when determining the counted months. If the pro-rated month is counted, technically the family will receive less than six full months of assistance. The recommendation has been made to allow States the option of not counting the pro-rated month, thereby permitting all families to receive six full months of assistance.

Response: We do not believe that it is necessary to regulate the manner in which States apply the six-month rule. We believe that States should institute procedures to ensure six full months of coverage in the manner best suited to their administrative needs. One acceptable method in a State that pays from the date of application is to pro-rate the first month, issue a full monthly payment for the next five months, and pro-rate the seventh month. Under this method, the sum of the two pro-rated payments will equal one month.

Comment: One State recommended that when a woman receives AFDC based on being pregnant, those months of assistance not be counted in determining the time limits on cash assistance if subsequent to the birth of the child the family applies for AFDC–UP. In such a situation, the parents have not been in receipt of JOBS services to assist them in re-entering the labor force, and the father and the unborn child cannot be assisted until the child's birth. They recommended that since the *family* has not been assisted, the months the pregnant woman receives benefits should *not* be counted toward the six-month limitation.

Response: We agree. A pregnant woman receives benefits under section 406(b) of the Social Security Act, not under the AFDC–UP program which is set forth in section 407 of the Act. Therefore, the months that a pregnant woman receives AFDC due to pregnancy are not counted in determining the benefits for the family after the baby's birth.

Comment: One State agency asked whether it is necessary to amend the State AFDC plan or the JOBS plan to provide information on the State's implementation of a time-limited AFDC–UP program if the State has already implemented JOBS statewide and the plan already includes information on the AFDC–UP program.

Response: Yes, it is necessary to amend the State AFDC plan even if the State has implemented JOBS and provided information on the AFDC–UP program such as State implementation of certain JOBS participation requirements for unemployed parents. However, information on State implementation of time-limited AFDC–UP programs and other related AFDC amendments of the Family Support Act is to be provided on preprints under the State AFDC plan. State plan preprint pages and instructions for implementation of the related AFDC amendments in title IV of the Family Support Act, are provided in FSA Action Transmittal No. 90–15, dated July 18, 1990.

Comment: Two State agencies commented that the proposed requirement that States "provide that an unemployed principal earner must indicate his or her desire to participate in JOBS" creates unnecessary paperwork and recommended that the requirement be eliminated.

Response: We agree. Section 250.40(a) requires that an applicant must be informed at the time of application of the availability of JOBS program activities and the supportive services for which they are eligible. Additionally, § 250.40(c)(1) provides that after the State IV–A agency gives an AFDC applicant the aforementioned information, the agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate his or her desire to participate in the program and provide a clear description of how to enter the program. In light of these other requirements, we are deleting this provision from § 233.101(a)(6).

Comment: We received numerous comments from State agencies and advocacy organizations regarding the requirement for a family to reapply for benefits at the end of the "non-cash period" of time-limited AFDC–UP. All were opposed, citing that the requirement for an application may impose significant administrative burdens and hurdles for needy families. Many commenters were concerned that the requirement to file a new application each time a family becomes eligible for time-limited assistance will have negative effects as artificially imposed, unnecessary gaps occur in their benefit coverage.

Many commenters stated that families will be regularly reporting their circumstances for Food Stamps and Medicaid purposes and would clearly be eligible for renewed AFDC–UP. They pointed out that the proposed regulations provide that eligible families in time-limited States are considered to be "AFDC–UP recipients during any month that assistance is denied solely by reason of the time limitation"; therefore, it follows that a new application should not be required since current AFDC recipients are not required to file an application in order to continue to receive assistance.

Commenters observed that for Medicaid purposes, families are considered to be "deemed AFDC recipients" during periods of "suspended" benefits in order to keep them eligible for medical benefits. They also indicated problems regarding transitional benefits during non-payment months and difficulty for the principal earner in maintaining the "connection with the work force" requirement.

Most of the commenters recommended that States be given the flexibility to build into their State Plan the option to design their time-limited program to restore recipients automatically to payment status. They recommended using the monthly reporting form which could be annotated by the family at the expiration of the time period. They felt that this is consistent with the intent of the Family Support Act and would allow AFDC–UP families to access transitional benefits if they lose eligibility during the "Medicaid only" period.

Response: AFDC–UP recipients who receive benefits under a time-limited program are not considered recipients during the period that they are not receiving benefits except for connection with the work force requirement purposes. In addition, section 402(a)(42) requires that Medicaid be provided when the family is not receiving AFDC–UP due to the time limitation. Accordingly, the cases are closed when the time limit for receipt of cash assistance expires. When the period of non-receipt of cash assistance ends, a family is eligible for AFDC–UP if it then meets anew the eligibility requirements and requests aid. It is up to the State to determine the formality of the written application required under § 206.10(a)(1)(ii). For example, a State may choose to make this written application a brief signed statement by the applicant requesting that cash assistance be resumed and acknowledging that all previously reported conditions of eligibility and payment remain unchanged. In addition, a State may choose to design an application that allows the individual to simply update any changes in circumstances that occurred during the non-payment period. Moreover, since § 233.101(b)(3)(v) requires the State, prior to termination due to a time limitation, to notify an AFDC–UP recipient family of the earliest month that it may again receive AFDC–UP cash

assistance, few unnecessary gaps should occur in their benefit coverage.

With regard to the comment concerning the difficulty for the principal earner in maintaining the "connection with the work force" requirement during the non-payment months, we must point out that if the requirements of section 407(b)(2)(B)(ii)(III) of the Act are met, a principal earner is deemed to be receiving AFDC–UP during such non-payment months. This statutory provision should minimize the difficulty in maintaining a "connection with the work force."

Comment: One commenter stated that the proposed notice provisions under § 233.101(b)(3) (iv) and (v) are a constructive and appropriate exercise that will give families information necessary for them to plan and budget.

Another commenter pointed out that the requirement to notify a family of the earliest month they could potentially re-qualify for AFDC–UP, after benefits have been exhausted due to time limitation, would have a major impact on automation. They state that this requirement will force the automated system to project up to six months into the future using additional logic not currently contained in the system.

Response: We recognize that the notice provisions will place new demands on State systems. However, in consideration of the characteristically unstable and difficult circumstances surrounding AFDC families, we believe that the requirement that States develop a method of notifying these families of the next month of eligibility outweighs the disadvantage of State workload burden and supports the intent of the Family Support Act. In addition, we intend to monitor implementation of this requirement, and will propose changes to the regulation if warranted. These provisions are contained in § 233.101(b)(4) (vi) and (vii) of the final rules.

Program of Education, Training, and Employment Services

Section 401(b) of the Family Support Act also added a new section 407(b)(2)(B)(ii)(I), which requires States electing to time-limit assistance to provide education, training, and employment services to help parents in AFDC–UP families prepare for and obtain employment. It further provides that education, training and employment activities authorized under the JOBS program satisfy this requirement. States may also design their own programs for providing education, training, and employment services subject to the approval of the Secretary. We are adding a new § 233.101(b)(4)(iii) to implement this requirement.

A State that elects to time-limit AFDC–UP is required to submit a State IV–A plan amendment which identifies its program(s) for unemployed parents. If the State is offering a State-designed program other than the IV–F program throughout the State or if it is offering a State-designed, non-JOBS program in certain areas of the State, the plan must describe the activities the State is providing and where they are available. The activities for a State-designed, non-JOBS program must include: (1) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree, (2) training whereby individuals acquire market-oriented skills necessary for self-support, and (3) employment services for placing individuals in jobs. The program must be available to families throughout the year. Also, participation in the program must be made available during periods when cash assistance is not provided due to the time limitation. Consistent with our policy for regular AFDC families, participation in the JOBS program or any State-designed, non-JOBS program is always subject to the approval of the IV–A agency.

Individuals participate in JOBS activities on either a mandatory or voluntary basis pursuant to regulations at §§ 250.30 and 250.31. States have the option to provide necessary supportive services for individuals participating in State-designed, non-JOBS education, training, and employment services programs for families subject to the AFDC–UP requirements. Federal financial participation is available, under sections 403 (k) and (l) of the Social Security Act, for the costs of such services provided to participants. The regulations at 45 CFR part 255 apply to such services. Consistent with the policy expressed at § 255.2, States may not require participation in a State-designed, non-JOBS program activity if there are unmet supportive services needs which prevent an individual from participating.

Under section 402 (g)(1)(A)(i)(II) of the Social Security Act, the States must guarantee child care during periods when cash assistance is provided and when cash assistance is not provided to an individual participating in a JOBS activity or in the education, training, and employment activities of a State-designed non-JOBS program for AFDC–UP purposes if the State approves the activities for the individual.

Approval criteria for supportive services for a State-designed, non-JOBS program must be specified in the State Supportive Services plan. While the option to provide supportive services for a State-designed, non-JOBS program is distinct from the option to provide supportive services for self-initiated education and training in non-JOBS areas, States may wish to use the same or similar criteria for approving such activities and the respective supportive services.

Section 233.101(b)(3) also requires that the State agency must notify each AFDC–UP family under a time limitation that a program of employment preparation is available.

In carrying out the requirements for employment preparation, Federal financial participation (FFP) is available only for programs established under the authority of the JOBS program. State-designed programs, though meeting the requirements of section 407(b)(2)(B)(ii)(I) of the Social Security Act to help families prepare for and obtain employment, area not eligible for FFP because they do not qualify for Federal matching under section 403(a) of the Social Security Act. Specifically, section 403(a)(3) provides that no payment shall be made under the State's title IV–A plan with respect to amounts expended in connection with the provision of any service described in section 2002(a) of the Social Security Act, other than those child care and supportive services authorized under section 402(g) of the Social Security Act. Since section 2002(a) specifically describes activities related to training and employment services, we conclude that State-designed programs meeting the requirements of section 407(b)(2)(B)(ii)(I) are not eligible for FFP.

States that do not time-limit AFDC–UP cash assistance may also provide programs to help families prepare for and obtain employment. Employment preparation programs established under the JOBS program are eligible for FFP, but, as explained above, State-designed programs of employment preparation operated outside the authority of the JOBS program are not eligible for FFP.

Comment: We received comments from four organizations and eight State agencies about assistance following termination of cash assistance due to a time limit. In the preamble to the Notice of Proposed Rulemaking (55 FR 34297, column 2), we said that families (receiving AFDC–UP) should "be permitted to participate during periods when they do not receive cash assistance due to the time limitation." Several commenters asked us to clarify the State's obligation in such situations.

Response: Each State is required to provide an AFDC–UP program throughout the year, regardless of

whether it has elected to time-limit its program. Further, section 402(a)(19)(B)(i)(II) of the Act permits individuals who would be recipients of AFDC if the State had not exercised the option to time-limit the program (under section 407(b)(2)(B)(i)) to participate in the JOBS program on a voluntary basis.

Thus, for example, an unemployed parent, who has lost eligibility for AFDC due to the time limit may volunteer to participate in a JOBS activity. He or she may enter a JOBS component, subject to approval of the State agency, during the period when cash assistance is not provided. Accordingly, if the unemployed parent is participating in a JOBS component activity at the point that the time-limit expires, such parent may complete that activity. In the same way, an unemployed parent may enter an appropriate activity provided through a State-designed, non-JOBS program when cash assistance is not provided. Further, if the unemployed parent is participating in a State-designed non-JOBS program at the point that the time limit expires, such parent may complete that activity.

Child care and supportive services for participation in an approved activity are available during the period of the non-availability of cash assistance as provided in the State's Supportive Services plan. For States that wish to provide a State-designed program, we will be adding a new preprint page to the Supportive Services plan to cover supportive services for State-designed programs. Federal financial participation is available for such child care and supportive services.

Comment: Several commenters asked if they should schedule education and training activities for unemployed parents that extend beyond the period of cash assistance.

Response: In determining the unemployed parent's responsibilities, the individual and the agency need to consider the time limit. As described in the preceding response, such individuals may complete an education or training activity that was initiated under the JOBS program prior to the expiration of the time limit. However, the parent may not be required to continue participating in the activity during periods when he or she is not receiving cash assistance due to the time limitation. Further, a parent who volunteers to enter or complete an activity after the expiration of the time limit may not be sanctioned for failure to participate.

Comment: Although the preamble to the proposed regulations stated that the program of education, training and employment must be provided throughout the year and not just during the months that the individual is not receiving AFDC benefits, one commenter pointed out that the regulations at § 233.101(a)(8) implied that the program only had to be available for individuals who had lost their eligibility for benefits.

Response: We agree that the regulatory language was not clear and have revised § 233.101(b)(3) to reflect the requirement specified at section 407(b)(2)(B)(ii)(I) of the Act, i.e., the program must be provided throughout the year.

In the proposed rules, there were provisions related to time-limited programs in both § 233.101(a) and § 233.101(b). In order to clarify which provisions are specifically addressed to time-limited programs, we have reorganized § 233.101 and have listed all of the time-limited provisions at § 233.101(b)(3).

Comment: One commenter asked for clarification of the State's obligation to provide a program of education, training and employment as described in the proposed rule at § 233.101(a)(8) (now § 233.101(b)(3)) in the context of the statewideness requirement for JOBS enunciated at § 250.11.

Response: The requirement to provide an approved program of education, training and employment services is mandated for States that choose to time-limit their AFDC–UP program. If a State provides a JOBS program which meets the definition of statewide as specified at § 250.11, the requirement to provide an approved program of education, training and employment services for unemployed parents is met.

Prior to October 1, 1992, a State operating an approved JOBS program, even one that does not meet the definition of statewide, also meets the requirement of having an approved program of education, training and employment services by making referrals to existing programs that together provide such services—e.g., programs such as those offered through the public employment offices of the State and the Job Training Partnership Act (JTPA) program. After October 1, 1992, a State may not operate less than a statewide program without an approved waiver from the Secretary. However, such a waiver does not relieve the State of the obligation to operate an approved program of education, training and employment services (as required by § 233.101(b)(3)) throughout the State including all non-JOBS areas. In non-JOBS areas, a State-designed program might include contracts and agreements for the provision of services or referrals to appropriate agencies for the services.

Comment: Two commenters felt that the language in the preamble to the notice of proposed rulemaking (55 FR 34296, column 1) regarding child care for two-parent families was inconsistent with the language provided in the preamble to the JOBS final rules (54 FR 42218, column 2). In the preamble to the notice of proposed rulemaking, it is stated that if the State determines that only one parent in a two-parent family is required to participate in JOBS, the State is not required to provide child care. In the preamble to the JOBS final rules, we provided an exception which would be allowed, on a case-by-case basis, in situations in which the family has provided the State information indicating that the "responsible" individual could not provide appropriate care.

Response: We agree that the language in the preamble to the notice of proposed rulemaking is inconsistent with the preamble to the final JOBS rules and retract it. The provisions of § 255.2 which guarantee child care do apply. If a State determines, on a case-by-case basis, that the "responsible" individual could not provide appropriate care, an exception could be allowed.

Medicaid Eligibility

The time limitation authorized in these regulations does not extend to medical assistance. Section 401(f) of the Family Support Act amended the Act by adding section 402(a)(42), which provides that a State must continue to provide Medicaid to all members of the AFDC–UP family, who will be called "qualified family members," during any months that they do not receive AFDC due solely to the time limitation. We are adding a new § 233.101(a)(6) to implement this requirement.

The Health Care Financing Administration is publishing separate regulations regarding Medicaid coverage for those families who do not receive AFDC–UP cash assistance because the State elected to time-limit its AFDC–UP program.

Participation in Training and Education Programs as a Quarter of Work

A family meets the "connection with the work force" test if the principal earner has six or more quarters of work in any 13 calendar quarter period ending within one year prior to application. Prior to the Family Support Act, section 407(d)(1) also provided that a "quarter of work" means a calendar quarter in which such individual received earned income of not less than $50 (or for which the individual would be credited with a quarter of coverage for Social Security

purposes) or in which an individual participated in the Community Work Experience Program (CWEP) or the Work Incentive Program (WIN).

Section 401(c)(4)(B) of the Family Support Act amended section 407(d)(1) by providing that participation in a JOBS program is credited as a quarter of work. In amending the definition of "quarter of work" to include JOBS participation, Congress deleted references to CWEP and WIN participation. Section 5062 of OBRA–90 restored such references. Thus, we have revised § 233.101(a)(3)(iv) as proposed to include such references.

Section 401(c)(1) of the Family Support Act also permits States to count participation in certain educational or vocational training activities during a quarter as a quarter of work for the purpose of meeting the "connection with the work force" test.

Specifically, section 401(c)(1) amended section 407(d)(1) of the Social Security Act to permit States to treat as a quarter of work any calendar quarter in which the principal earner:

- Attended an elementary or secondary school;
- Attended a vocational or technical training course; or
- Participated in an educational or training program under the JOB Training Partnership Act (JTPA).

In this connection, section 407(d)(1) of the Social Security Act limits application of these three types of activities to no more than four of the required six quarters. The remaining two quarters may be met only if the individual received (or had credited for Social Security purposes) earned income of not less than $50 or participated in WIN, CWEP, or the JOBS program under part F.

The Family Support Act also provides that the attendance in a school or training course must be "full-time," that the vocational or technical training course must be "designed to prepare the individual for gainful employment," and that the course must be approved by the Secretary of Health and Human Services.

In developing these final regulations, we considered whether to prescribe a Federal definition for "full-time" attendance and to issue rules prescribing the types of vocational and training courses which would qualify under this section. We decided that States should have maximum flexibility to define "full-time" attendance and prescribe rules governing training courses that are consistent with their own State laws and State Department of Education policies. This position is consistent with the Administration's objective to promote increased State and local government involvement in developing strategies to reduce welfare dependency.

Finally, section 407(d) of the Social Security Act permits a State to apply the provisions of section 407(d)(1)(B) on less than a statewide basis. A State that elects to apply these provisions on a less than statewide basis is required to so specify in its State plan.

A new § 233.101(a)(3)(iv) implements these provisions.

Comment: We received extensive comments regarding § 233.101(a)(3)(iv) which addresses participation in training and education programs as a quarter of work. Fifteen State agencies and three organizations all expressed strong opposition to the limitation that attendance in vocational or technical training cannot substitute for more than four of the six required quarters of work over an individual's lifetime. They pointed out that this requirement is absent from the Family Support Act and felt that it meets neither the intent of the Act nor that of the Congress. They stated that it places an impossible burden on States to retain and track such information over a recipient's lifetime and possibly, across State lines. They further observed that AFDC records are routinely destroyed three to four years after closure. All of the commenters urged removal of the lifetime limit.

Response: We concur with these comments and have removed the "lifetime" limitation from this final rule.

Comment: Several State agencies also objected to extending the four-quarter limitation to not only vocational and technical training, but also to elementary education, secondary education and JTPA.

Response: We are unable to revise the provision as it is a statutory requirement. The Family Support Act provided in section 407(b)(1)(A)(iii)(I) of the Social Security Act that "* * * no more than 4 of which may be quarters of work defined in subsection (d)(1)(B) * * *." The referenced subsection addresses not only vocational and technical training, but also specifically mentions elementary education, secondary education and JTPA.

Comment: A number of State agencies asked if the same four quarters of qualifying education or training that were used to satisfy the "quarters of work test" in the first application for AFDC–UP could again be used in any subsequent applications. It was also suggested that if such a practice is permitted, any future quarters of vocational or technical training would not be utilized.

Response: Section 407(b)(1)(A)(iii) requires that such parent must have "* * * 6 or more quarters of work * * * in any 13-calendar quarter period *ending within one year prior to the application for such aid* * * *" (emphasis added). This statutory provision clearly prescribes that in any application or reapplication situation, the principal earner will have to meet the 6 out of the 13 calendar quarter requirement. Accordingly, it may be possible for certain quarters of work to apply to more than one application for AFDC–UP.

Comment: Two State agencies recommended that the list of training programs which are creditable toward quarters of work be expanded to include CWEP and WIN.

Response: In amending the definition of "quarter of work" to include participation in JOBS, the Family Support Act of 1988 deleted the references to WIN and CWEP. Section 5062 of OBRA–90 reincorporated these references. We have revised § 233.101(a)(3)(iv) to include such references.

State Flexibility in Structuring its AFDC–UP Program

Section 401(b) of the Family Support Act added section 407(b)(2)(A) to the Act, which permits a State to design its AFDC–UP program to reflect the individual needs of the State and to emphasize education, training, and employment services for unemployed parents and their spouses eligible for AFDC–UP. Under this provision, a State may require the principal earner or both parents to participate in the JOBS program under title IV–F of the Act. Section 407(b)(2)(C) further provides that such participation may be up to 40 hours per week for each such parent subject to the existing limitations and conditions of the JOBS program. We are adding a new § 233.101(b)(1) to implement these provisions.

In addition, section 407(b)(2)(C)(ii) provides that a State may elect to provide assistance to participants only "after the performance of assigned program activities" under the JOBS program, but at regular intervals of no greater than one month.

To implement these provisions, § 233.101(b)(2) of the final rules authorizes a State to elect to withhold payment contingent upon performance of JOBS program activities. In this connection, the State is required to prescribe a set of criteria which defines goals or standards, such as a number of hours of attendance or completion of assigned study materials. The State is

also required to inform the recipient of the goals or standards and notify him or her that payment for a period will be withheld unless there is satisfactory completion of each assigned activity for that period.

Finally, the final rules require payments to be made at regular intervals of not more than one month. The option to require a parent to participate in the JOBS program and the option to provide assistance after the performance of assigned activities are available to States which currently operate an AFDC–UP program as well as to those now required to establish a program. (In Guam, Puerto Rico, the Virgin Islands, and American Samoa, this option is not available until October 1, 1992.)

Comment: Four State agencies and three organizations commented on the provision regarding State flexibility in structuring their AFDC–UP programs, specifically payment after performance. The central question appears to be whether failure to meet participation requirements under pay after performance would result in a sanction of the individual or loss of eligibility of benefits for the entire family. The majority of commenters posed this question and recommended that a family not be penalized for non-performance if good cause exists. They also feel that the regulation should provide that States may pay a full or partial grant if an individual has substantially or partially complied with all performance requirements. Two States, however, recommended that States be allowed the option to withhold the entire family's assistance payment until after the principal earner participates in JOBS activities, rather than withholding just the principal earner's portion. Another State asserted that the requirement to determine eligibility and calculate grants on a monthly basis will destroy their current bi-monthly payment after-performance process.

Commenters also recommended that final regulations clarify that § 250.36 (conciliation and fair hearing procedures under JOBS) applies in pay after performance situations and that families have a right to the aid-paid-pending rules until the hearing is resolved.

Response: We believe that under the statute, States have maximum flexibility in operating the payment after performance requirement. Three options are available with regard to the application of penalties and fair hearings for individuals who fail to satisfy their performance obligation.

The first option is to follow the JOBS program sanctions, conciliation and fair hearing requirements at §§ 250.34 and 250.36. Under this option, an individual who fails to fulfill the JOBS performance obligation will be sanctioned by not having his or her needs taken into account in determining the family's need for assistance and amount of payment. The sanction action must not occur until after the applicable conciliation and fair hearing requirements have been completed.

The second option recognizes that under the statute, States may view the payment after performance requirement as a "condition of payment" for either the individual or the entire assistance unit. This means that the State may "suspend" making the portion of the family's assistance payments attributable to the individual or the entire amount of the family's payments until the payment after performance obligation is met.

The third option permits States to impose a proportional reduction so that the family's payment (or the amount of the payment attributed to the individual) would be in direct proportion to the number of hours of participation. For example, if an individual only performs 20 of the required 40 hours, the State may reduce the amount of the family's assistance payment (or the individual's portion of the payment) by half since the individual only fulfilled half of the performance obligation.

Under the second and third options, States must develop good cause criteria for use in determining whether or not the assistance payment should be suspended or reduced. The requirement to formulate such criteria is reasonable given that events beyond the control of the individual (e.g., an accident or illness which incapacitates the individual) may prevent the performance requirement from being accomplished. The fair hearing rules to be applied under these options can either: (1) Adhere to the current timely and adequate notice and aid-paid-pending requirements at §§ 205.10(a)(4)(i) and 205.10(a)(6); or (2) only send an adequate notice to the individual not later than the date of action which informs him or her of the right to a fair hearing and the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if a request for a hearing and immediate reinstatement is made within 10 days after the date of the notice. Our rationale for permitting the request for a hearing and immediate reinstatement within 10 days of the action is that since the individual continues to be afforded the right to a hearing and to have assistance continue at the prior month's level, no harm is done.

States electing payment after performance will have to formulate procedures to transition individuals from receiving assistance at the beginning of a performance period to the end of the period. States may wish to consider either of these two transition alternatives. The first permits a State to issue one payment before the payment after performance obligation is completed. The following example is illustrative:

The State normally pays on the 2nd of the month to cover a family's need for that calendar month. In January, a family is issued an assistance payment on the 2nd and informed on the 5th that the principal earner must begin payment after performance on February 1. The first payment under the monthly payment after performance obligation is made on March 2. This payment is based on performance during February. However, in order to ease the family's transition, the State issues a payment on February 2 to cover the family's need for February even though the performance obligation for that month has not been completed. The full March 2 payment is then contingent on the required performance for February being met. Accordingly, if the individual fails to perform during February and the State chooses not to pursue a JOBS sanction (see first option above), then the March 2 payment must be "suspended" or reduced (see second and third options discussed above) subject to the applicable fair hearing rules.

The second alternative, as explained in the example below, allows a State to delay payment until performance is actually completed.

The State usually pays on the 1st of the month to cover a family's need for that calendar month. A family is issued a payment on March 1 and told that the principal earner must begin payment after performance on April 1. The first payment based on completion of the April performance obligation is due on May 1. No payment is issued during the month of April since the principal earner has not yet fulfilled the performance obligation. This option comports with section 407(b)(2)(c)(ii) which permits a State to issue payment "at regular intervals of no greater than one month but *after the performance of assigned program activities*" (emphasis added).

The principles of the two options also apply at the time an application for AFDC is approved. Regardless of the option selected, States must fully explain the pay after performance requirements to both applicants and recipients (e.g., the hours the principal earner is expected to "work" before receiving payment, the potential reduction of assistance due to nonperformance, hearing and

reinstatement rights, and advice on how to manage during the family's transition to a different payment date).

With reference to the comment concerning the bi-monthly payment after performance process, the Social Security Act clearly precludes States from implementing a process that pays an assistance unit at intervals greater than one month. Specifically, section 407(b)(2)(C)(ii) of the Act authorizes States to "provide for the payment of aid to families with dependent children *at regular intervals of no greater than one month* but after the performance of assigned program activities." (emphasis added).

EFFECTIVE DATE: Section 401(g) of the Family Support Act established October 1, 1990, as the effective date for all amendments with respect to the AFDC–UP program for all States (other than Guam, Puerto Rico, the Virgin Islands, and American Samoa). The effective date of these amendments in Guam, Puerto Rico, the Virgin Islands, and American Samoa is October 1, 1992.

States which did not operate an AFDC–UP program did not have to wait until October 1, 1990, to establish the program. However, before October 1, 1990, a State could not time-limit assistance, institute a payment after performance system, or count participation in an education or training activity in meeting the "connection with the work force" test. These provisions may not be implemented until October 1, 1992, in Guam, Puerto Rico, the Virgin Islands, or American Samoa.

The final regulations for the JOBS program include revisions in current regulations governing the AFDC–UP program, specifically, §§ 233.100(a)(5)(i), 233.100(a)(6), and 233.100(c)(2)(iii). Section 233.100 is suspended when § 233.101 becomes effective, i.e., the publication date in the Federal Register of the final rule (or October 1, 1992, for Guam, Puerto Rico, the Virgin Islands, and American Samoa.) It should be noted, that in situations where the applicable Family Support Act provisions that were effective as of October 1, 1990, conflict with § 233.100, which is in effect until the date these final rules are published, the relevant statutory provisions govern. Section 401(h) of the Family Support Act also provides that the amendments made by that section will terminate on September 30, 1998. Thus, beginning on October 1, 1998, the statutory provisions governing the AFDC–UP program will be the same as they were on September 30, 1990, and § 233.100 will again be in effect.

Increased Limit on Dependent Care Disregard (§ 233.20(a)(11)(i) of the Final Regulations)

The Family Support Act increased the limit on the dependent care disregard from $160 to $175 per dependent per month for children age two or older and for incapacitated adults, and to $200 for children under age two. Additionally, the order of the earned income disregards is changed so that the dependent care disregard is applied last.

We have revised the regulations at §§ 233.20(a)(11)(i)(C), 233.20(a)(11)(i)(D) and 233.20(a)(11)(ii)(B) to implement this amendment.

Under section 2301 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, the Secretary was granted authority to specify an amount lower than the dependent care disregard limit for individuals who are employed part-time. This provision is implemented in the current regulations at § 233.20(a)(11)(i)(C). Under section 301 of the Family Support Act, States must guarantee child care for each family with a dependent child to the extent the State determines such care is necessary for an individual to accept employment or remain employed. A State may guarantee child care through the dependent care disregard or any other method it deems appropriate. We therefore proposed that for part-time employment and employment not continuing throughout the month, the full $175/$200 disregard limits may be applied, or the State agency may establish a procedure under which it determines and applies disregard limits less than $175/$200. This will allow maximum State flexibility in using the disregard as a method to guarantee child care for JOBS participants and other employed recipients.

We received comments on this provision from two State agencies and two advocacy organizations. The comments are discussed below:

Comment: Two commenters did not favor allowing States unrestricted discretion in setting the part-time disregard limits because they believe some States have set unreasonably low disregard levels under the current regulations. The commenters recommended that the final regulations allow a State to set disregard limits below $175/$200 for part-time employment only if the State's local market rate survey demonstrates that the actual cost of care at the 75th percentile is a level lower than $175/$200.

Response: We have decided to retain the State option as proposed. Linking the $175/$200 disregard limits in any way to the local market rate, as the commenters suggested, would establish a correlation that is not supported by the Social Security Act. The local market rate concept is specifically set forth in section 402(g)(1)(C)(ii) of the Act, which applies to reimbursing families with child care expenses, and operates only as a ceiling on the amount of Federal matching for such purposes (see also 45 CFR 255.4). Accordingly, the final regulation continues to allow States the flexibility to set disregard limits at levels they choose for individuals who are employed less than full-time throughout the month.

Comment: Two commenters recommended that we broaden the regulation at § 233.20(a)(11)(i)(D) to cover the costs necessary for the care of a child in the home who receives foster care or Supplemental Security Income when an AFDC recipient needs care for such children in order to accept or continue employment.

Response: There is no statutory authority for such a change. Section 402(a)(8)(A)(iii) expressly limits application of the disregard to dependent care costs for the care of a dependent child receiving AFDC and an incapacitated adult living in the same home as the dependent child.

Increased Standard Work Expense Disregard (§ 233.20(a)(11)(i) of the Final Regulations)

The Family Support Act increased the amount of the standard work expense disregard from $75 to $90 per month for each employed applicant and recipient.

We have revised the regulations at § 233.20(a)(11)(i)(B) to implement this provision.

We received comments on this provision from three State agencies. The comments are discussed below.

Comment: The commenters requested that we change the $75 to $90 in the stepparent deeming formula for ease of calculation and consistency in application of the disregards.

Response: We have no authority to change the stepparent deeming formula set out at section 402(a)(31) of the Social Security Act because the Family Support Act does not amend this provision.

Earned Income Tax Credit Disregard (§ 233.20(a)(11)(viii) of the Final Regulations)

The Family Support Act requires that earned income tax credit (EITC) payments in the form of advance payments or Federal income tax refunds will be disregarded and repealed the statutory provision that required States

to consider EITC payments as earned income.

The Family Support Act does not specifically address whether EITC payments are disregarded only as income, or as income and resources. We proposed to disregard EITC payments as income in the determination of need and the amount of benefits, and to count EITC payments as resources if retained after the month of receipt. We also proposed to count EITC payments as income for purposes of determining whether a family meets the eligibility requirement of section 402(a)(18) of the Act—i.e., its monthly income may not exceed 185 percent of the State's standard of need. However, we have revised the regulations to reflect the clarifying amendments of OBRA–90 which were effective on January 1, 1991. Accordingly, the final regulations provide that EITC payments in the form of advance payments or income tax refunds are excluded from consideration as income for purposes of the 185 percent gross income limitation, as well as in the determination of need and the amount of benefits. In addition, EITC payments are excluded from consideration as a resource for the month in which the EITC is received and the following month. Further, at State option, overpayments may be waived when the overpayment occurred because receipt of an EITC payment by a family during the period January 1, 1990, to December 31, 1990, resulted in ineligibility under the 185 percent gross income limitation at § 233.20(a)(3)(xiii).

We are implementing these provisions by revising the regulations at §§ 233.20(a)(3)(iv)(E), 233.20(a)(3)(xiii), 233.20(a)(11)(i)(B), 233.20(a)(11)(i)(C), 233.20(a)(11)(i)(D), and 233.20(a)(11)(ii)(B), by removing § 233.20(a)(6)(ix), and by adding a new § 233.20(a)(11)(viii). In the proposed rules, the new § 233.20(a)(11)(viii) was inadvertently numbered § 233.20(a)(11)(vii).

We received comments on these provisions from 11 State agencies, two advocacy organizations, and one legal assistance organization. The comments are discussed below.

Comment: A State agency asked whether families who lose eligibility for AFDC due to receipt of an EITC payment are eligible for transitional child care and Medicaid benefits for families disqualified due to earned income.

Response: Loss of eligibility due to the EITC would not qualify a family for transitional child care or Medicaid benefits because EITC payments are no longer defined as earned income. As explained in the preamble to the notice of proposed rulemaking (55 FR 34299, column 2), the Family Support Act repealed the statutory provision that required States to count EITC payments as earned income. Specifically, section 402(c)(2)(A) of the Family Support Act repealed section 402(d) of the Social Security Act. Section 402(d) provided that EITC payments must be considered as earned income in the AFDC program. We are implementing this amendment by removing paragraph 233.20(a)(6)(ix) of the current regulations which provides that earned income will include the amount of any EITC payments. The final rules provide that EITC payments are excluded from consideration as income, and are also excluded from consideration as a resource for the month of receipt and the following month. Thus, receipt of EITC payments cannot affect AFDC eligibility unless a portion of the EITC is retained after the month following the month of receipt, and the amount so retained causes the family's resources to exceed the $1,000 resource limit (or a lower limit set by the State).

Comment: Fourteen commenters objected to the proposed regulations because they believe Congress intended to totally disregard EITC payments as income and resources.

Response: The Omnibus Budget Reconciliation Act of 1990 made technical amendments to the Act which clarify the intent of Congress regarding the EITC disregards. These amendments have been incorporated in the final rules.

Households Headed by Minor Parents (§ 233.107 of the Final Regulations)

Current law does not preclude a minor parent from applying for and receiving AFDC as a caretaker relative for his or her dependent child regardless of whether the minor parent lives with his or her parent or legal guardian or has established his or her own home.

The Family Support Act, however, allows States to restrict eligibility of families headed by a minor parent and to restrict the direct payment of assistance to the minor parent.

Specifically, section 403 of the Family Support Act added a new section 402(a)(43) to the Social Security Act. Section 402(a)(43) provides that a State may require, as a condition of eligibility, that a minor parent and dependent child in his or her care reside: (1) In the home of the minor parent's parent, legal guardian, or other adult relative, or (2) in an adult-supervised supportive living arrangement.

Further, section 402(a)(43) identifies the kinds of minor parents who may be barred from living alone with their dependent children. These include individuals who are under 18, have never been married, and have a dependent child in their care. Women who are under 18, have never been married, and would otherwise qualify for AFDC on the basis of pregnancy may also be barred.

However, section 402(a)(43) does not define certain concepts. First, there is no definition of "adult relative." Since the term "relative" has long had a specific meaning for AFDC program purposes (see § 233.90(c)(1)(v)(A)), we proposed to utilize the same concept for section 402(a)(43) purposes. Similarly, section 402(a)(43) does not specify an age for an individual to be considered an adult. However, since that section specifically identifies minor parents as being under 18, we proposed that an individual 18 or over be considered to be an adult. The proposed regulations at § 233.107 reflected these decisions.

Secondly, the Act does not define the concept of "adult-supervised supportive living arrangement." We proposed in § 233.107(b)(3) that this concept be defined to include any certified or State-approved setting (other than a public institution) in which a minor receives counseling, supervision, guidance or other supportive services in addition to food and shelter. We included the requirement for supportive services such as counseling or guidance in order to give meaning to the words "adult-supervised" and "supportive" and to make this living arrangement analogous to a family setting where a concern for the emotional growth and development of the minor parent and child would be evident in addition to a concern for physical needs.

Section 403 also provides that AFDC is to be provided to the parent, legal guardian, or other adult relative on behalf of the minor parent and dependent child "where possible." If the State determines that it is not possible to make the payment to any of these individuals, this determination needs to be documented in the case file.

The Family Support Act further provides that the restriction in payment to a household headed by a minor parent applies only to an individual who is "under the age of 18 and has never married." We interpret these provisions to mean that States may restrict payment only through the month of the minor parent's eighteenth birthday. Because of the considerable variance in State laws concerning the treatment of annulments, we are not planning to regulate in this area. Accordingly, it is up to each State to make a determination based on its own State

law as to whether a minor parent whose marriage was annulled "has never married."

Finally, we noted that section 402(a)(43) specified five exemptions when the restriction on payments to an unmarried minor parent under 18 with a dependent child would not apply. These are:

(1) Where the minor parent has no living parent or legal guardian whose whereabouts is known (section 402(a)(43)(B)(i)). The State agency must make reasonable efforts to confirm the nonexistence of a parent or legal guardian and document its findings in the case file. These efforts may not, however, interfere with the standards of promptness for acting on applications as set forth in § 206.10(a)(6).

(2) Where there is no parent or legal guardian who allows the minor parent to live in his or her home (section 402(a)(43)(B)(ii)). It is the responsibility of the State agency to make reasonable efforts to confirm and document its findings in the case file.

(3) Where the State agency determines that the physical or emotional health or safety of the individual or his or her dependent child would be jeopardized by living in the home of the individual's parent or legal guardian (section 402(a)(43)(B)(iii)). Neither the statute nor its legislative history specifies criteria for determining when an individual's physical or emotional health or safety is in jeopardy. We note, however, that this provision appears similar to the good cause provisions in § 232.42 relating to refusal to cooperate in establishing paternity and securing support. Accordingly, we invited comments on whether and to what extent the criteria in paragraphs (a)(1), (b), and (c) of § 232.42 should apply to section 402(a)(43)(B)(iii).

(4) Where the individual lived apart from his or her parent or legal guardian for a period of at least one year before either the birth of the dependent child or date of application for assistance (section 402(a)(43)(B)(iv)). It is the responsibility of the State agency to confirm this and document its findings in the case file.

(5) Where the State agency otherwise determines, in accordance with Federal regulations, that there is good cause for waiving this requirement (section 402(a)(43)(B)(v)). Neither the statute nor its legislative history specifies the types of circumstances that would warrant a good cause waiver by the State. In order not to restrict State discretion in this area, we proposed in new § 233.107(c) to permit States to specify other reasons for finding that good cause exists for a minor parent to receive AFDC while living apart from the household of a parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement. States wishing to exempt recipients under this provision of the Act would need to submit a State plan amendment setting forth the circumstances the State intends to recognize.

We received comments on this provision from two State agencies, one Federal agency, one legal assistance organization and two advocacy organizations. The comments are discussed below.

Comment: One commenter believes there is an apparent contradiction both within the proposed rule and section 402(a)(43). The rule provides that States may require minor parents to live with adult relatives in addition to parents or legal guardians. However, the first four exemptions from the requirement set forth in section 402(a)(43) and the proposed regulation are all limited to circumstances pertaining to just parents or legal guardians. Thus, the regulation seems to imply that if a minor had no living parents whose whereabouts were known or no legal guardian, the State could not require the minor to live with his or her aunt in order to receive a grant. The commenter recommended that the exemption clauses be amended to add adult relatives along with parents and guardians in the first four exemptions.

Response: We do not agree that there is an internal contradiction. Section 402(a)(43)(A)(i) specifies that a minor may be required to live with a parent, legal guardian, etc. The choice of living arrangement is left to the State agency—i.e., the State agency may determine whether a minor must reside with a parent, a legal guardian, another adult relative, or in an adult-supervised supportive living arrangement. Second, the State agency's choice of living arrangement for the minor is limited whenever such minor satisfies one of the exemptions listed in section 402(a)(43)(B). If a State agency determines that the minor meets one of the exemptions (e.g., the whereabouts of the minor's parent are unknown and no legal guardian exists) and satisfies all other eligibility factors, then the State agency must authorize payment and allow the minor to live independently. Although the State agency may suggest that an exempt minor adopt a particular living arrangement, it may not require such an arrangement (e.g., to live with a non-guardian adult relative).

Comment: A commenter recommended that in cases where minors meet one of the five exemptions, that they would not have to live with their parents, legal guardians or other adult relatives but could still be required to live in an adult-supervised living arrangement unless the State has reason to not require it.

Response: Requiring an exempt minor to live in an adult-supervised living arrangement would be contrary to section 402(a)(43) of the Social Security Act.

Comment: One commenter was concerned because the preamble discussion of the proposed rules requires the State agency to document the case file whenever a minor is found to be exempt. It was feared that such documentation will be vigorously reviewed by quality control (QC) and result in additional QC errors.

Response: Case record documentation which supports a finding of eligibility and payment is a basic accountability mechanism to ensure that State and Federal funds are being expended correctly. With regard to QC, adherence to the requirements of section 402(a)(43) must be reviewed given that this provision establishes a condition of eligibility for AFDC, in States that choose to implement it.

Comment: One commenter expressed concern that a minor mother living with a parent, guardian or other adult relative might be unable to participate as a separate household for Food Stamp program purposes even if she purchases and prepares food separately. The commenter believes that this situation could adversely impact on minor parents who are trying to complete high school and make it on their own.

Response: The criteria for determining whether or not individuals qualify as a separate household for Food Stamp purposes is established by the Food and Nutrition Service (FNS). The FNS criteria are outside the scope of these final rules.

Comment: One commenter believes that the minor mother provision was well-intended but that it does not recognize the fact that many pregnant or parenting teens come from dysfunctional families where there is alcohol or drug abuse, sexual or physical abuse, or abandonment by one or both parents. It was also stated that although teens are better off living with responsible and caring parents or adults, such healthy household circumstances are not always possible.

The commenter concluded with the hope that alternatives to the minor mother provision would be considered.

Response: We appreciate the commenter's perspective and agree that the minor mother provision is not a

panacea for all problems associated with teen pregnancy and dysfunctional family environments. We view this provision as only one incentive for families to remain together and achieve self-sufficiency. We will continue to objectively evaluate and support effective legislative proposals to help maintain and strengthen family life.

Comment: Three commenters objected to the use of the list of specified relatives at § 233.90(c)(1)(v)(A) to determine who may qualify as an adult relative. It was recommended that the final rule provide for living with an adult relative which includes, but is not limited to, those individuals identified at § 233.90(c)(1)(v)(A). One commenter also pointed out that this limitation is inadequate because it excludes individuals who are related to the child, but not related to the minor parent (e.g., the paternal grandparents of the minor's child).

Response: We believe that limiting the number of adult relatives with whom a minor may live to the list of specified relatives described in section 406(a) of the Social Security Act is appropriate. This limitation comports with congressional intent to not expand the program beyond the limits described in section 406(a) of the Social Security Act.

The list of specified relatives currently reflected in the Federal regulations was first established in 1944 and is based on section 406(a) of the Social Security Act. The only subsequent expansion of this list occurred with the passage of the Social Security Act Amendments of 1956. These amendments, which recognized first cousins, nephews, and nieces as specified relatives, only extended the degree of relationship slightly beyond the then present law. Furthermore, neither the legislative history of the minor mother provision nor the language of section 403 of the Family Support Act gave any indication that Congress wished to expand the AFDC program to cover other relatives not explicitly described in section 406(a) of the Social Security Act. Accordingly, since section 402(a)(43) uses the same term "relative" as used in section 406(a) we interpret it in the same way. Please note, however, that the Department is currently developing new regulations at § 233.90(c)(1)(v) to clarify that, within the meaning of section 406(a) of the Social Security Act, a specified relative includes all relations within the fifth degree of kinship to the dependent child, which extends to include a great-great-great grandparent, a great-great uncle or aunt or a first cousin once removed.

With regard to the comment on grandparents "not related to the minor parent," we must emphasize that paternal grandparents are considered as specified relatives so long as paternity of the grandchild has been established. If paternity has not been established, such putative grandparents cannot be recognized as specified relatives under section 406(a) of the Social Security Act.

Comment: Two commenters expressed concern about our linkage in the preamble of the exemption at § 233.107(a)(4) on physical or emotional health or safety of the minor parent or dependent child to the current child support good cause provisions at § 232.42. It was argued that these provisions are not similar to the child support cooperation standard and should not be incorporated or cross-referenced in the final rule. As written, the child support cooperation provision focuses on harm to the child and only looks to whether the caregiver is harmed in relation to affecting his or her ability to care for the child. The statutory language in the minor parent provision is explicit that potential harm to either the minor parent or the child is sufficient reason for an exemption. It was recommended that we not cross-reference the minor mother exemption to the child support cooperation provision at § 232.42.

Response: We agree with the recommendation and believe that State agencies should have the flexibility to develop criteria for determining whether or not the physical or emotional, health and safety of the minor parent or dependent child is jeopardized. Accordingly, any reference to § 232.42 of the regulations is deleted. For example, States might consider including in their criteria:

(1) a substantiated report of abuse or neglect;

(2) the filing of a neglect petition;

(3) A statement by the minor parent that is corroborated by an adult or substantiated through agency investigation; and

(4) A family living situation that results in overcrowding, violates the terms of a lease, or results in living arrangements that violate local health or safety standards.

Comment: Two commenters agreed that State-defined reasons for good cause, as permitted in the rule at § 233.107(a)(5), should be contained in the State plan. However, States should also have the discretion to identify additional reasons, on a case-by-case basis, and not be strictly held to the reasons enumerated in the plan. It was recommended that the final regulation retain the requirement that additional State-developed reasons for good cause be enumerated in the plan but that these reasons are not exclusive.

Response: We agree with the commenters that States must have the discretion to identify additional reasons for good cause. We further acknowledge the sensitivity of the minor mother issue and recognize the difficulty of anticipating all case circumstances that may arise. However, we disagree with the position that States be permitted to render good cause determinations based solely on individual case circumstances which are not described in the State plan. Such determinations may result in disparate treatment of applicants and recipients and thereby conflict with the equitable treatment provisions at § 233.10(a)(1).

With reference to the fact that certain needy cases will fall outside of the reasons specified in the State plan, we suggest that States compile and evaluate information on such cases and decide whether or not their plans need to be amended.

Comment: One commenter stated that minor parents are unlikely to be well-versed in program rules and many will not have the bureaucratic competence to navigate a complex exemption-verification system. To prevent potential harm, it was suggested that these regulations contain express procedural safeguards to be followed by States who elect to implement the minor parent option.

Response: While we agree with the commenter that minor parents may experience some difficulty in navigating a complex exemption and verification system, we disagree that Federal regulations should contain detailed procedural safeguards. We believe that the safeguards for applicants at § 206.10(a)(2)(i) are adequate and that State agencies should continue to have the flexibility to develop appropriate procedures. A cross-reference to this section and examples of appropriate safeguards that States may choose to follow have been added to the final rule at § 233.107(f).

Comment: One commenter pointed out that many minor parents in need of AFDC have been raised in a single-parent home and have little or no contact with their absent parents. As drafted, § 203.107 seems to require that a minor parent would have to attempt to move in with a virtual stranger (his or her long absent parent) and, in many cases, leave a familiar community for a distant city, in order to qualify for AFDC. The commenter suggested that we redraft the exemption at § 233.107(a)(1) as follows: "The minor parent has no living parent in whose custody he or she has lived or legal guardian whose whereabouts is known."

Response: We do not believe that the recommended change is necessary. Our proposed § 233.107(a)(3) makes clear that a minor parent would not have to live with a parent who is a virtual stranger or leave a familiar community for a distant city in order to receive AFDC. A minor parent who has lived apart from his or her parent or guardian for at least one year before the birth of a dependent child or the parent's having made application for AFDC would not be required to live with that parent.

Comment: Two commenters stated that the proposed regulations at § 233.107(e)(3) with its emphasis on State "approval" of "adult-supervised supportive living arrangements" is excessively stringent and goes beyond what the Family Support Act requires or allows. It was suggested that we revise the rule to allow States the flexibility to judge the suitability of an adult-supervised arrangement using criteria that is less formal than required for foster care placements.

Response: It is not our intention to limit State flexibility in determining the suitability of adult-supervised living arrangements. We have revised § 233.107(e)(3)(i) accordingly.

Comment: One commenter recommended that we add a provision to the rule which requires States to grant benefits to minor parents and their children on a provisional basis during transition periods (e.g., movement from one approved living arrangement to another approved living arrangement or from a non-approved residence to an approved living arrangement). It was argued that minor parents are an at-risk population and providing AFDC payments during transition periods will deter homelessness and lessen the chance of child abuse.

Response: We have no objection to a State establishing a transition period of reasonable length. However, we have decided not to require such a period by regulation. It seems to us that a State is in the best position to determine whether a transition period is appropriate and what its duration should be.

Comment: One commenter asked if the definition of an adult-supervised supportive living arrangement described at § 233.107(e)(3) requires a formal guardianship appointment.

Response: State agencies have the flexibility under the rule to determine whether or not a formal guardianship appointment is necessary for placement in an adult-supervised arrangement.

Comment: One commenter asked if an adult has to be in residence at an approved facility on a twenty-four hour basis. It was pointed out that in many maternity homes or supervised independent living arrangements, a counselor may only be present during the day, but not at night.

Response: We recognize that in many adult-supervised living arrangements, a counselor may be on the premises during the day but not at night, or in the building but not in the living quarters of the minor parent. State agencies may qualify such settings as adult-supervised supportive living arrangements under § 233.107(e)(3) of this rule if they choose.

Authorization for American Samoa to Participate in Programs Under Title IV of the Social Security Act (§ 201.1 (g) and (h), § 301.1, and § 1355.20 of the Final Regulations)

Section 601 of the Family Support Act amended certain sections of the Social Security Act to authorize American Samoa to participate in the programs set forth in title IV of the Social Security Act. Section 1101 of the Social Security Act has been amended by adding American Samoa to the list of jurisdictions included in the definition of "State" as it applies to programs under title IV. Accordingly, we have revised the regulation at § 201.1 (g) and (h) to implement this amendment.

Sections 403(a)(1) and 403(a)(2) of the Social Security Act have also been amended to add American Samoa to the list of jurisdictions that may make AFDC assistance payments. Additionally, section 1108 of the Social Security Act has been amended to incorporate a fiscal year Federal payment ceiling of $1,000,000 in American Samoa for expenditures under the AFDC, Foster Care and Adoption Assistance programs under titles IV–A and IV–E respectively.

Section 1118 of the Social Security Act, which provides an alternative Federal method of computing assistance payment expenditures, has been amended to add American Samoa to the jurisdictions that are subject to the 75 percent Federal financial participation (FFP) matching rate. In the case of American Samoa, this 75 percent matching rate applies solely to AFDC assistance payment expenditures.

The proposed regulations published on September 10, 1990 (55 FR 34294–34305), contained amendments to the quality control, rules at §§ 205.43(a), 205.44(b) and 205.44(c). Because enactment of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) resulted in changes to the quality control system for which separate rulemaking is necessary, we have withdrawn our proposed changes to the aforementioned sections.

There were no comments on § 201.1(g), as proposed. However, because we omitted adding a reference to title IV–F in § 201.1(g) and in § 201.1(h), we are making such changes at this time. We are also making conforming amendments to add American Samoa to the regulatory definitions of "State" at § 301.1 for the title IV–D program and at § 1355.20 for the title IV–B and IV–E programs.

Responsibilities of the State (§§ 204.3 and 232.2(a) of the Final Regulations)

Section 604 of the Family Support Act amended section 402(a) of the Social Security Act to provide that the State agency is responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner. It further provides that the State shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and they are notified of the paternity establishment and child support services for which they may be eligible.

The Conference Report (H.R. Rep. No. 100–998, 100th Cong., 2d Sess. 131–132 (1988)) indicates that Congress recognizes and emphasizes the responsibility that applicants and recipients must assume if long term welfare dependency is to be avoided. Congress wants assurances that services and benefits will be delivered to all applicants and recipients in an integrated manner; all applicants and recipients will be informed of the education, employment and training opportunities for which they are eligible, the obligations of the State agency, and the rights, responsibilities, and obligations of participants in the education, employment and training program. Additionally, Congress wants to assure that, in addition to preparing for and obtaining employment, all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations. However, neither the Family Support Act nor the Conference Report provides specific directions or guidelines as to how the State agencies are to achieve these goals. As a consequence, in developing the proposed regulations, it was decided to repeat the language contained in the Act, affording a State agency flexibility in administering its programs.

We received comments on this provision from three State agencies and one legal assistance organization. The comments are, discussed below.

Comment: One State agency supported the regulation as written. The other commenters indicated that, as the regulation does not include specific requirements, the new rule does not amend, extend, or enhance previously existing requirements. Two of these commenters asked that the regulation include specific requirements.

Response: The paucity of comments on this section reinforces our decision to not provide specific requirements. The regulation may be amended later if it is determined that there is a need. As stated earlier, neither the Family Support Act nor the Conference Report provides specific directions or guidelines. The only requirement of a State is, as the Job Opportunity and Basic Skills Training (JOBS) Program is implemented, to provide program information to applicants at the time of application and to recipients at the time of the first redetermination after implementation. (See the preamble to the JOBS regulations (54 FR 42176) and § 250.40.)

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, these regulations adhere to the general requirements for all rulemaking in section 2 of Executive Order 12291.

Paperwork Reduction Act

Sections 233.20(a)(11)(i)(D), 233.20(a)(13)(i)(A), 233.101, and 233.107 of the final rules contain information collection requirements which are subject to review by the Office of Management and Budget under 44 U.S.C. 3504(h), a provision of the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official designated for this purpose whose name appears in the preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3208), Washington, DC 20503, Attention: Desk Officer for DHHS, ACF.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these final rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Federalism and Family Effects

We certify that these final rules have been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

One requirement of the Family Support Act is that all States implement an Aid to Families With Dependent Children Unemployed Parent Program (AFDC–UP). Prior to enactment of the Family Support Act, States had the option to choose whether to operate an AFDC–UP program. This requirement has a significant effect on States because it mandates that all States address the problem of unemployment in low-income families.

Analysis Required by Executive Order 12606 on the Family

The Family Support Act permits States the option to require, as a condition of eligibility, that individuals under age 18 who have never married and have a dependent child in their care (or who are eligible as pregnant women) live in the residence of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement such as a foster care or maternity home. This provision has a significant beneficial impact on the family because it supports the traditional family function of providing adult-supervised care and control of children until they reach the age of majority. Prior to the enactment of the new law, minor parents could move away from their family homes and receive AFDC in an independent living arrangement.

List of Subjects

45 CFR Part 201

Grant programs, Social programs, Guam, Public assistance programs, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

45 CFR Part 204

Administrative practice and procedure, Grant programs, Social programs, Public assistance programs.

45 CFR Part 205

Computer technology, Grant programs, Social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 232

Aid to Families with Dependent Children, Child support, Grant programs, Social programs.

45 CFR Part 233

Aliens, Grant programs, Social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 301

Child support, Grant programs/Social programs, Reporting and recordkeeping requirements.

45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Programs 93.020, Assistance Payments—Maintenance Assistance.)

Note: This document was received at the Office of the Federal Register on June 29, 1992.

Dated: January 21, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: April 20, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Accordingly, chapters II, III, and XIII, title 45, Code of Federal Regulations are amended as set forth below:

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 201 is revised to read as follows:

Authority: 42 U.S.C. 303, 603, 1203, 1301, 1302, 1316, 1353 and 1383 (note).

2. Section 201.1 is amended by revising paragraphs (g) and (h) to read as follows:

§ 201.1 General definitions.

* * * * *

(g) *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The term "State" with respect to American Samoa applies to the programs set forth in title IV–A and IV–F of the Act.

(h) *State agency* means the State agency administering or supervising the administration of the State plan or plans under title I, IV–A, IV–F, X, or XVI (AABD) of the Act.

PART 204—GENERAL ADMINISTRATION—STATE PLANS AND GRANT APPEALS

1. The authority citation for part 204 is revised to read as follows:

Authority: 42 U.S.C. 602(a)(44) and 1302 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 67 Stat. 631.

2. Part 204 is amended by adding § 204.3 to read as follows:

§ 204.3 Responsibilities of the State.

The State agency shall be responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 is revised to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), 1320b–7.

2. Section 205.10 is amended by adding a new paragraph (a)(4)(ii)(K) as follows:

§ 205.10 Hearings.

(a) * * *

(4) * * *

(ii) * * *

(K) An individual's payment is suspended or reduced for failure to meet a payment after performance obligation as set forth at § 233.101(b)(2)(iv) (B) or (C) of this chapter. In addition to the contents set forth in paragraph (a)(4)(i)(B) of this section, the adequate notice must advise the individual of the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if he or she makes a request for a hearing and reinstatement within 10 days after the date of the notice.

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. The authority citation for part 232 is revised to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 232.2 is amended by revising paragraph (a) to read as follows:

§ 232.2 Child support program; State plan requirements.

* * * * *

(a) Has in effect a plan approved under part D of title IV of the Act that, consistent with the provisions of this title, ensures that all applicants for and recipients of AFDC are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible; and

* * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note.

2. Section 233.20 is amended by revising paragraphs (a)(3)(iv)(E) and (a)(3)(xiii), removing paragraph (a)(6)(ix), revising paragraphs (a)(11)(i)(B) through (a)(11)(i)(D), revising paragraph (a)(11)(ii)(B), adding paragraph (a)(11)(viii), and revising paragraph (a)(13)(i)(A) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(iv) * * *

(E) For AFDC, income tax refunds, but such payments shall be considered as resources; and

* * * * *

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)), paragraph (a)(11)(ii) and paragraph (a)(11)(viii) of this section.

* * * * *

(11) * * *

(i) * * *

(B) The first $90.

(C) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i), (a)(11)(v) and (a)(11)(vi) of this section of an individual who received assistance in one of the four prior months.

(D) An amount equal to the actual cost for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC, but not to exceed $175 for each dependent child who is at least age two or each incapacitated adult, and not to exceed $200 for each dependent child who is under age two. For individuals not engaged in full-time employment or not employed throughout the month, the $175 and $200 disregard limits may be applied, or the State agency may establish disregard limits less than $175 and $200.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i)(B) and (a)(11)(i)(D) of this section, and $30 plus one-third of the individual's earned income not already disregarded under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to the individual's earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30 disregard was actually applied in those months) unless twelve consecutive months have passed during which the individual is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 plus one-third disregard, nor does it count as one of the consecutive months.

* * * * *

(viii) Disregard as income the amount of any earned income tax credit payments received by an applicant or recipient. Disregard as resources, in the month of receipt and the following month, the amount of any earned income tax credit payments received by an applicant or recipient. "Earned income tax credit payments" include:

Any advance earned income tax credit payment made to a family by an employer and any earned income tax credit payment made as a refund of Federal income taxes.

* * * * *

(13) * * *

(i) * * *

(A) The State must take all reasonable steps necessary to promptly correct any overpayment, except that, as set forth in the plan, a State may waive any overpayment which occurred because receipt of an earned income tax credit payment by a family during the period January 1, 1990, to December 31, 1990, caused ineligibility under the 185 percent gross income limitation in paragraph (a)(3)(xiii) of this section.

* * * * *

3. Section 233.100 is amended by adding paragraph (d) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are suspended through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are suspended from October 1, 1992, through September 30, 1998.

4. Section 233.101 is added to read as follows:

§ 233.101 Dependent children of unemployed parents.

(a) Requirements for State Plans. Effective October 1, 1990 (for Puerto Rico, American Samoa, Guam, and the Virgin Islands, October 1, 1992), a State plan must provide for payment of AFDC for children of unemployed parents. A State plan under title IV–A for payment of such aid must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this part. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section are met.

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid;

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, shall be made by the title IV–A agency. The IV–A agency may accept the recommendations of such agencies.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(A) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(B) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(C) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within one year prior to the application for such aid, or

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31):

(A) In which an individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Social Security Act) or participated in a program under part 250 of this chapter; or

(B) At State option (as specified in the plan), in one or more subdivisions of the State, in which he or she attended, full-time, an elementary school, a secondary school, or a vocational or technical training course that is designed to prepare the individual for gainful employment, or in which the individual participated in an educational or training program established under the Job Training Partnership Act, provided that an individual may qualify for no more than four quarters of work under this paragraph for purposes of the requirement set forth in paragraph (a)(3)(iii)(A) of this section; and

(C) A calendar quarter ending before October 1990 in which an individual participated in CWEP under section 409 of the Social Security Act or the WIN program established under title IV–C of the Social Security Act (as in effect for a State immediately before the effective date of that State's JOBS program).

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he or she would have been eligible to receive such benefits upon filing an application, or he performed work not covered by such law, which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing an application.

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of

each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide that the needs of the child's parent(s) shall not be taken into account in determining the needs and amount of assistance of the child's family:

(i) If and for so long as such child's parent(s), unless exempt under § 250.30(b) of this chapter, is not currently participating (or available for participation) in a program under part 250 of this chapter or, if they are exempt under § 250.30(b)(5) of this chapter (or because a JOBS program has not been established in the subdivision where they reside or they reside in a JOBS subdivision but there is no appropriate JOBS activity in which they can participate), are not registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that medical assistance will be furnished under the State's approved plan under title XIX during any month in which an otherwise eligible individual is denied assistance solely by reason of the time limitation provided under paragraph (b)(3) of this section.

(b) State Plan Options. A State plan under title IV–A may:

(1) Require the principal earner or both parents to participate in an activity in the JOBS program under part 250 of this chapter, subject to the limitations and conditions of part 250 of this chapter, provided that the participation of each parent in all required activities under the JOBS program does not exceed 40 hours per week, per parent.

(2) Provide cash assistance after the performance of assigned program activities by parents required to participate in an activity in the JOBS program under part 250 of this chapter (as provided in paragraph (b)(1) of this section) so long as the State:

(i) Makes assistance payments at regular intervals at least monthly,

(ii) Prescribes a set of criteria which defines goals or standards for each assigned activity in the JOBS program which must be completed by the participant prior to payment, and

(iii) Prior to, or concurrent with, assignment to an activity, notifies the participant of the prescribed goals or standards and that payment for a period will be withheld unless performance of each assigned activity for that period is completed.

(3) Provide for a State to operate a payment after performance system under which a family is issued an assistance payment after the applicable family member has successfully completed her obligation to participate in JOBS for a specific period. If the applicable family member fails without good cause to satisfy the obligation, the State may:

(i) Impose a sanction in accordance with the JOBS program rules at §§ 250.34, 250.35 and 250.36 of this chapter;

(ii) Reduce the family's assistance payment to which the specific period applies by the amount of the payment attributable to the family member for that period or do not make the payment to the family; or

(iii) Reduce the family's assistance payment to which the specific period applies (or the amount of the payment attributable to the family member for that period) in proportion to the number of required hours that were not completed.

For States that elect to implement paragraphs (b)(3) (ii) or (iii) of this section, the fair hearing requirements set forth at § 205.10(a)(4)(ii)(K) of this chapter apply.

(4) Limit the number of months that a family may receive AFDC–UP under this section when the following conditions are met:

(i) The State did not have on September 26, 1988, an approved AFDC–UP program under section 407 of the Social Security Act.

(ii) The family received such aid (on the basis of the unemployment of the parent who is the principal earner) in at least 6 of the preceding 12 months.

(iii) The State has in effect a program (described in the plan) for providing education, training, and employment services to assist parents in preparing for and obtaining employment throughout the year. Such a program may include education, training and employment activities under the JOBS program which are provided in part 250 of this chapter or under a State-designed program which provides:

(A) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree,

(B) Training whereby an individual acquires market-oriented skills necessary for self-support, and

(C) Employment services which seek to place individuals in jobs.

(iv) The State must guarantee child care necessary for an individual to participate in an approved, State-designed, non-JOBS program. The regulations at part 255 of this chapter apply to such care.

(v) The State has the option of providing necessary supportive services associated with an individual's participation in a State-designed, non-JOBS program. Federal financial participation is available under sections 403 (k) and (l) of the Social Security Act. The regulations at part 255 of this chapter apply to such supportive services.

(vi) The State must inform an AFDC–UP family at the time of application that AFDC–UP cash assistance will terminate due to a time limitation, that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the AFDC program during the time limitation for AFDC–UP, and that a program of training, education, and employment services is available to prepare the family to become self-supporting.

(vii) Prior to termination due to a time limitation, the State must notify an AFDC–UP recipient family of the earliest month that it may receive AFDC–UP cash assistance again. This notification may be included in the notice of proposed action which is required pursuant to § 205.10(a)(4) of this chapter. To receive assistance again, the family must make a new application.

(viii) In establishing eligibility upon re-application following months of nonpayment due to the time limitation, an otherwise eligible family that does not receive aid in a month solely by

reason of the option to limit assistance under this paragraph shall be deemed, for purposes of determining the period under paragraph (a)(3)(iii)(A) of this section, to be receiving AFDC–UP cash assistance in that month. This provision also applies if, at the time of the family's original application for assistance, eligibility was established based on the provisions of paragraph (a)(3)(iii)(B) of this section, but eligibility could have been established based on the provisions of paragraph (a)(3)(iii)(A) of this section.

(c) *Federal Financial Participation.* (1) Federal financial participation is available for payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child:

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month;

(iv) Whose parent who is the principal earner:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid,

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner:

(A) Is currently participating in or available to participate in an activity in the JOBS program under part 250 of this chapter, unless exempt, or is registered with the public employment office in the State if exempt from the JOBS program under § 250.30(b)(5) of this chapter; and

(B) Has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made:

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to undertake appropriate steps directed toward the participation of the parent who is the principal earner in a program under part 250 of this chapter;

(iv) To the extent that such payments are made to meet the need of an individual who is subject to a sanction imposed, under part 250 of this chapter (for failure to meet the requirements for participation in the JOBS program).

(3) Federal financial participation is available for child care and supportive services expenditures associated with participation in an approved State-designed program (as provided in paragraph (b)(3)(iii) of this section) under titles IV–A and IV–F of the Act respectively. However, Federal financial participation is not available for any other costs, program or administrative, associated with State-designed programs.

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are in effect through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are in effect from October 1, 1992, through September 30, 1998.

5. A new § 233.107 is added to read as follows:

§ 233.107 Restriction in payment to households headed by a minor parent.

(a) *State plan requirements.* A State in its title IV–A State plan may provide that a minor parent and the dependent child in his or her care must reside in the household of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement in order to receive, AFDC unless:

(1) The minor parent has no living parent or legal guardian whose whereabouts is known;

(2) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(3) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for AFDC;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian;

(5) There is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement.

(b) *Allegations.* If a minor parent makes allegations supporting the conclusion that paragraph (a)(4) of this section applies, the State agency shall determine whether it is justified.

(c) *Good Cause.* The circumstances justifying a determination of good cause must be set forth in the State plan.

(d) *Protective Payments.* When a minor parent and his or her dependent child are required to live with the minor parent's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement, then AFDC is paid (where possible) in the form of a protective payment.

(e) *Definitions:* For purposes of this section:

(1) A *minor parent* is an individual who (i) is under the age of 18, (ii) has never been married, and (iii) is either the natural parent of a dependent child living in the same household or eligible for assistance paid under the State plan to a pregnant woman as provided in § 233.90(c)(2)(iv) of this part.

(2) A *household of a parent, legal guardian, or other adult relatives* means the place of residence of (i) a natural or adoptive parent or a stepparent, or (ii) a legal guardian as defined by the State, or (iii) another individual who is age 18 or over and related to the minor parent as specified in § 233.90(c)(1)(v) of this part provided that the residence is maintained as a home for the minor parent and child as provided in § 233.90(c)(1)(v)(B) of this part.

(3) *An adult-supervised supportive living arrangement* means a private family setting or other living arrangement (not including a public institution), which, as determined by the

State, is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child or the provision of supportive services, such as counseling, guidance, or supervision. For example, foster homes and maternity homes are "adult-supervised supportive living arrangements."

(f) *Notice Requirements.* Minor applicants shall be informed about the eligibility requirements and their rights and obligations consistent with the provisions at § 206.10(a)(2)(i). For example, a State may wish to: (1) Advise the minor of the possible exemptions and specifically ask whether one or more of these exemptions is applicable; and (2) assist the minor in attaining the necessary verifications if one or more of these exemptions is alleged.

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by revising the definition of "State" to read as follows:

§ 301.1 General definitions.

* * * * *

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

* * * * *

Subchapter G—The Administration for Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, Child Welfare Services

PART 1355—GENERAL

1. The authority citation for part 1355 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq.; 42 U.S.C. 670 et seq.; and 42 U.S.C. 1301 and 1302.

2. Section 1355.20 is amended by revising the definition of State to read as follows:

* * * * *

State means the 50 States, the District of Columbia, and except in 45 CFR 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands and American Samoa.

* * * * *

[FR Doc. 92-15655 Filed 7-8-92; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. ROS-3, Notice No. 2]

RIN 2130-AA48

Bridge Worker Safety Rules

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; extension of effective date.

SUMMARY: FRA is extending the effective date of the Bridge Worker Safety Standards from July 24, 1992 to August 24, 1992.

EFFECTIVE DATE: The rule becomes effective on August 24, 1992.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-0443).

SUPPLEMENTARY INFORMATION: FRA published its final rule establishing safety standards for the protection of those who work on railroad bridges on June 24, 1992 (57 FR 28116). As originally written, the final rule set the effective date at thirty days after publication, or July 24, 1992. However, due to a typographical error that occurred in the printing process, the rule was published with an effective date of August 24, 1992. **Federal Register** internal rules mandated that a correction notice be printed changing the effective date to July 24, 1992, as originally submitted by FRA. However, that correction notice appeared on July 2, 1992 (57 FR 25561), which shortened the notice period for the regulated community to approximately three weeks. In order to provide a more reasonable time frame for regulated entities to comply with the regulation, FRA now extends the effective date of the final rule back to August 24, 1992, as it originally appeared in the **Federal Register** on June 24, 1992.

Issued in Washington, DC, on July 2, 1992.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 92-16139 Filed 7-8-92; 8:45 am]
BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 0198s]

General Administrative Regulations; Implementation of 1990 Farm Act Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to issue new regulations implementing recent amendments to the Federal Crop Insurance Act (FCI Act), as amended (7 U.S.C. 1501 *et seq.*), made by the Food, Agriculture, Conservation, and Trade Act of 1990, with respect to the collection, use, and storage of Social Security Account Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to implement rules affecting how the FCIC, direct insurance, and reinsured companies will collect, use, and store documents containing SSN's and EIN's.

DATES: Written comments, data, and opinions on this rule must be submitted not later than July 24, 1992, to be sure of consideration.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, 2101 L Street NW., 5th Floor, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1997.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12278.

On November 28, 1990, the President signed into law the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act). The 1990 Farm Act amendments to section 506 of the FCI Act constitute the basis of this proposed rulemaking containing the provisions for the collection, use, and confidentiality of SSN and EIN.

Section 506 of the FCI Act (7 U.S.C. 1506), as amended, directs the FCIC to require, as a condition of eligibility for participation in the multiple peril crop insurance program, submission of an SSN or EIN.

Each policyholder will be required to notify any other individual or entity that acquires or holds a substantial beneficial interest of 5% or more in such policyholder, of the requirements of the FCI Act, and, if required by the FCIC, provide to the FCIC the name and SSN or EIN of the person holding the substantial interest.

The amendments also provide that: (1) Each policyholder will be required to furnish the insuring company or the FCIC the policyholder's SSN or EIN; (2) each reinsured company will be required to furnish to the FCIC the SSN or EIN of each of its insureds whose policy is reinsured by the FCIC; and, (3) the confidentiality of SSN's and EIN's and related records must be strictly observed by all parties.

Further, and with respect to the applicability of these regulations to companies under an Agency Sales and Service Contract or a Standard Reinsurance Agreement, the Privacy Act of 1974 (5 U.S.C. 552a) requires at subsection (m) that when an agency [FCIC] provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system * * *. [A]ny such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date if this section [December 31, 1974], shall be considered to be an employee of an agency.

The Privacy Act of 1974 reflects the concern of Congress over the government's potential to invade individual privacy in the name of information collecting and provides constraints on an agency's recordkeeping. The principle focus of the Privacy Act, for contracting companies and reinsured companies is on the individual's access to certain records, the limitations on disclosure of records,

safeguards to protect records, and remedial measures for violations of the Act.

This regulation prescribes the procedures the FCIC will follow when participants submit their SSN or EIN to be eligible to participate in the crop insurance program. Previously, submission of SSN's and EIN's was voluntary and no penalty was imposed on participants in the crop insurance program who failed to provide this information on their applications. Under the mandate of the FCI Act, the FCIC, insurance, and reinsured companies will now begin collecting SSN's and EIN's to identify the policyholders. The FCI Act also requires those holding 5% or more interest in such policyholders to supply their SSN or EIN to the FCIC, insurance, or reinsured company.

Furthermore FCIC will; (1) maintain a system of records (for the FCIC, insurance, and reinsured companies); (2) collect, use, and store SSN's and EIN's; (3) clarify the FCIC's and the government contracting agents' authority to use and disclose SSN's and EIN's, and (4) describe the procedures to be used to destroy or discontinue use of EIN's and SSN's.

FCIC is soliciting comments from the public for 15 days after publication of this proposed rule in the **Federal Register**. Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Claims, Crop Insurance, Disaster assistance, Drug traffic control, Government employees, Income taxes, Intergovernmental relations, Reporting and recordkeeping requirements, Wages.

Proposed Rules

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) proposes to add a new subpart Q to its General Administrative Regulations to be known as 7 CFR part 400, subpart Q, General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

Sec.

Authority: 7 U.S.C. 1506, 1508.

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*) (FCI Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), to prescribe procedures for the collection, use, and confidentiality of Social Security Account Numbers (SSN) or Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of all crop insurance policies issued by FCIC under the FCI Act and all private insurance companies, including past and present officers and employees of such companies, selling such policies under an FCIC Agency Sales and Service Contract;

(2) All holders of crop insurance policies sold by private insurance companies and reinsured by the FCIC under the provisions of a FCIC Standard Reinsurance Agreement or other FCIC reinsurance agreement; and all private reinsured companies including past and present officers and employees of such companies;

(3) Any agent or company, or any past or present officer or employee of such agent or company, under contract to private insurance companies for loss adjustment or other purposes related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers and employees of the Federal Crop Insurance Corporation.

§ 400.402 Definitions.

(a) *Access*—with respect to authorized persons, the ability of the authorized person to read, review, and use for actions authorized under the FCI Act, the records containing the SSN or EIN.

(b) *ASCS*—Agricultural Stabilization Conservation Service, United States Department of Agriculture.

(c) *Applicant*—the person or entity that submitted the application for a crop insurance policy issued by the FCIC, or issued by a reinsured company under the FCI Act.

(d) *Authorized person*—an officer or employee of the FCIC, insurance company, or reinsured company, whose duties require access in the administration of the FCI Act.

(e) *Collection*—the act of obtaining and recording a SSN or EIN from participants in the crop insurance program.

(f) *Disposition of records*—the act performed by the insurance company or reinsured company of removing records containing a participant's SSN or EIN and disposition of such records by the insurance companies, or reinsured companies.

(g) *EIN*—a participant's Employer Identification Number required under section 6109 of the Internal Revenue Code of 1986.

(h) *FCI Act*—the Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(i) *FCIC*—Federal Crop Insurance Corporation.

(j) *FOIA*—the Freedom of Information Act, 5 U.S.C. 552.

(k) *Government contract employees*—authorized persons employed by an insurance or reinsured company, former officers or employees of such company, and loss adjusters.

(l) *Past officers and employees*—any officer or employee of the insurance company, reinsured company, or corporation who leaves the employ of such company or corporation subsequent to the official effective date of this rule.

(m) *Policyholder*—an applicant accepted by the FCIC, the insurance company, or the reinsured company.

(n) *Reinsured company*—a private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with the FCIC whose crop insurance policies are reinsured by the FCIC under such agreements

(o) *Related records*—any record, list, or compilation that indicates, directly or indirectly, the identity of any individual

with respect to whom an SSN or EIN is maintained in a system of records.

(p) *Restricted access*—restricting review of all records maintained by authorized persons to only the authorized persons who need access to such records for official business under the FCI Act.

(q) *Retrieval of records*—retrieval of an individual's records by a participant's SSN or EIN.

(r) *Safeguards*—methods of security to be taken by the FCIC, the insurance company, and the reinsured companies to protect a participant's SSN or EIN from unlawful disclosure and access. Records containing the SSN or EIN must be secured in locked file storage, secured computer data files, or similar safe storage.

(s) *SSN*—an individual's Social Security Number.

(t) *Storage*—the secured storing of records kept by the FCIC, insurance, or reinsured companies on computer diskettes (soft and hard drives) computer printouts, magnetic tape, index cards, microfiche, micro film, etc.

(u) *Substantial beneficial interest*—an interest of five percent (5%) or more in an applicant or policyholder.

(v) *System of records*—records maintained by the FCIC, insurance companies, or reinsured companies from which information is retrieved by a personal identifier including the SSN, EIN, or name.

§ 400.403 Required system of records.

Insurance companies and reinsured companies are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data. This data should include: (1) Name: (2) address; (3) city and state; (4) SSN or EIN; and (5) policy numbers which have been used by the FCIC, the insurance company, or the reinsured companies.

§ 400.404 Policyholder responsibilities

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to the FCIC, the insurance company, or the reinsured company to be eligible for insurance. The SSN and EIN will be used by the FCIC, the insurance companies, and the reinsured companies in: (1) Determining the correct parties to the agreement or contract; (2) collecting premiums; (3) determining the amount of indemnities; (4) establishing actuarial data on an individual policyholder basis; and (5) determining eligibility for program benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application or other forms where such SSN or EIN is required, the FCIC, insurance company, or reinsured company will reject the application.

(c) The policyholder is required to provide to FCIC, the insurance company, and the reinsured companies the name and SSN or EIN of any individual or company holding or acquiring access to a substantial beneficial interest in such policyholder.

§ 400.405 Company responsibilities.

The insuring or reinsured company is required to collect and record the SSN or EIN on each application or any other form required by the FCIC.

§ 400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(d)) may have access to the EIN's and SSN's obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

§ 400.407 Safeguards and storage.

(a) Access to records identifying an applicant's SSN or EIN is restricted as provided in § 400.406. Records must be secured in locked file storage, secured computer data files, or similar safe storage. An authorized person, as defined in § 400.402(d) must maintain hardcopy records in file folders and, when not in use, such hardcopy records must be: (1) locked in a cabinet or safe, and/or (2) when on a computer, kept on hard or floppy diskette, and accessed only through a secure computer system procedure.

(b) Records identifying a SSN or EIN stored on computer printouts, hard or floppy diskette, microfiche, or index cards must be kept in locked file cabinets, safes, or in secured computer systems.

§ 400.408 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) and section 6109(f) Internal Revenue Code of 1986 (26 U.S.C. 6109(f)). All records are confidential, and are not to be disclosed to anyone not authorized thereunder. Disclosure of records containing the SSN and EIN is restricted in accordance with the parameters of the Privacy Act Statement of Notice established under the Privacy Act (5 U.S.C. 552a).

§ 400.409 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person will subject that person, or the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552(a), and 42 U.S.C. 408.

§ 400.410 Obtaining personal records.

Policyholders in the crop insurance program will be able to review or correct their records, as provided by the Privacy Act. Participants may request their records by:

(a) Mailing a written request, with their signature, to the headquarters office of the FCIC; the field office, ASCS; the insurance company, or the reinsured company; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

§ 400.411 Disposition of records.

The insurance company, and the reinsured company will retain all records of policyholders for a period of not less than five (5) years. If a policyholder's insurance has not been renewed within a five year period from a final action on a policy (such as termination, loss adjustment, or collection), the insurance company or the reinsured company will transfer such records to FCIC.

§ 400.412 OMB Control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H of part 400, title 7 CFR.

Done in Washington, DC on June 2, 1992.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-15907 Filed 7-6-92; 3:47 pm]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Parts 160, 161, and 162

[Docket No. 91-027-2]

Accreditation of Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would revise the regulations by which we accredit veterinarians and authorize them to

perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities specified in 9 CFR Chapter I. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 91–027 received on or before July 24, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–027. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. J.A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6954.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1992, we published in the **Federal Register** (57 FR 23540–23548, Docket No. 91–027) a proposal to revise the regulations by which we accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities specified in 9 CFR chapter I. These changes would establish accreditation on a national rather than a State basis, and would also remove a test currently required for accredited veterinarians, require an orientation program for each newly accredited veterinarian, and specify standards for performance of certain services by accredited veterinarians. We also proposed to revise procedures for suspending and revoking accredited veterinarian status, and to add language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements. These proposed changes are intended to ensure that an adequate number of qualified accredited veterinarians are available in the United States to perform necessary animal health activities.

Comments on the proposed rule were required to be received on or before July 6, 1992. Shortly before the comment period ended, we received several requests to extend the period during which comments would be accepted. These requests came from several associations represesnting veterinarians and an animal health association, who stated that they would need additional time in which to formulate and submit their comments on the proposed rule. In response, we are reopening and extending the comment period on Docket No. 91–027 to include the period from publication of the proposed rule on June 4, 1992, through 15 days after the publication of this notice. This action will allow the requestors and all other interested persons additional time to prepare and submit comments.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 2nd day of July 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–16148 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064–AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its current regulations on extension of corporate powers to eliminate language which makes certain prohibitions concerning equity investments by savings associations applicable to state banks that are members of the Savings Association Insurance Fund. Such banks would thereafter be subject to the restrictions of proposed new regulations on activities and investments of insured state banks in lieu of the current restrictions. The proposed new regulations are published elsewhere in today's **Federal Register**. The effect of the proposed amendment would be to subject Savings Association Insurance Fund member state banks and Bank Insurance Fund member state banks to the same restrictions in so far as their equity investments are concerned.

DATES: Comments must be received by August 10, 1992.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC, 20429. Comments may be hand delivered to room F–402, 1776 F Street NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC, 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street NW., Washington, DC, 20429; Victor L. Saulsbury, (202) 898–3950, Financial Analyst, or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION: On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act) (12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991.

Paragraph (c) of section 24 "Equity Investments by Insured State Banks", (12 U.S.C. 1831a(c)), provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. As already indicated, this paragraph became effective December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited

investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f), "Common and Preferred Stock Investment", (12 U.S.C. 1831a(f)) which also became effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited "grandfather" for investments in common or preferred stock or shares of investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire or retain, subject to the FDIC's approval, listed stock or registered shares to the same extent to which the bank did so during the period from September 30, 1990 to November 26, 1991 ("relevant period") up to an aggregate maximum of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception (and must receive the FDIC's approval) before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(2) provides an exception for the retention of an equity interest in a subsidiary that was engaged in a state in insurance activities as principal on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order.

Elsewhere in today's Federal Register the FDIC is proposing to add a new part 362 to the FDIC's regulations that would implement the equity investment provisions of section 24.

On April 30, 1991 the FDIC amended the FDIC's regulations by adding a new § 333.3 to part 333, "Extension of Corporate Powers" (12 CFR 333.3). That section, among other things, causes state banks that are members of the Savings Association Insurance Fund ("SAIF member state banks") to be subject to the conditions and restrictions regarding equity investments to which state savings associations are subject pursuant to § 303.13 of the FDIC's regulations (12 CFR 303.13). Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)).

Among other things, section 28 of the FDI Act and § 303.13 of the FDIC's regulations prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. If a state savings association meets it fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

It was the determination of the FDIC's Board of Directors when § 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted FDICIA along with the provisions described above concerning equity investments.

It is the FDIC's opinion that § 333.3 was not repealed by implication with the enactment of section 303 of FDICIA. However, in light of the action by Congress, the FDIC's previously expressed intent to adopt uniform treatment for state banks, and the fact that the equity investment provisions of section 24 of the FDI Act are currently effective, the FDIC is proposing to amend § 333.3 of this part to allow state banks to be governed by the equity investment provisions of section 24 of the FDI Act and any regulations adopted by the FDIC pursuant thereto.

Regulatory Flexibility Analysis

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the proposed amendment if adopted, will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their equity investments than that to which Bank Insurance Fund member state banks are subject. SAIF member state banks are presently required to comply

with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment would relieve that burden and place SAIF member state banks on a par with BIF member state banks.

As the proposed amendment will not have a disparate economic impact on small institutions, the FDIC is not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

List of Subjects in 12 CFR Part 333

Banks, banking.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819, 1828(m).

§ 333.3 [Amended]

2. Section 333.3(a) is amended by removing "set forth in § 303.13(a) through § 303.13(f) of this chapter" where it appears in the first sentence and adding in lieu thereof "set forth in § 303.13(a) through § 303.13(c), and § 303.13(f) of this chapter".

By Order of the Board of Directors.

Dated at Washington, DC this 16th day of June, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-15360 Filed 7-8-92; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 362

RIN 3064-AA29

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to add new regulations governing the activities and investments of insured state banks. The proposal implements a portion of new section 24 of the Federal Deposit Insurance Act (FDI Act). Under the proposal, insured state banks are prohibited, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank. The proposal requires banks to file with the FDIC their plan for the divestiture of any prohibited equity investments; it establishes procedures regarding notices to the FDIC pertaining to excepted equity investments; delegates authority to act on notices and divestiture plans from the FDIC's Board of Directors to the Director of the Division of Supervision and to regional directors, and requires that certain information be provided to the FDIC regarding existing insurance underwriting activities that the law allows to be continued.

DATES: Comments must be received by August 10, 1992.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898-3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Shirley K. Basse, Review Examiner, (202) 898-6815, or Cheryl A. Steffen, Review Examiner, (202) 898-6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898-3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898-3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Victor L. Saulsbury, Financial Analyst, (202) 898-3950, or David K. Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation is found in § 362.3(c), § 362.3(d), and § 362.4 and takes the form of (1) a requirement to submit a divestiture plan covering the disposition of equity investments that may no longer be retained, (2) a requirement to file a notice of intent to retain and acquire common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), and (3) a notice concerning certain insurance activities conducted by well-capitalized insured state banks and/or any of their subsidiaries as of November 21, 1991. The information will allow the FDIC to properly discharge its responsibilities under section 24 of the Federal Deposit Insurance Corporation Act as amended by section 303 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, 12 U.S.C. 1831a). The information in the divestiture plans and notices will be used by the FDIC for assuring compliance with the law and as part of the process of determining risk to the applicable insurance fund and for granting exceptions, if warranted, to the restrictions contained in section 24 of the Federal Deposit Insurance Corporation Act.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

Plan for Divestiture of Prohibited Equity Investments

Number of Respondents: 1879.
Number of Responses Per Respondent: 1.
Total Annual Responses: 1879.
Hours Per Response: 16.
Total Annual Burden Hours: 30,064.

Notice of Intent To Invest in Common or Preferred Stock or Shares of an Investment Company

Number of Respondents: 1038.
Number of Responses Per Respondent: 1.
Total Annual Responses: 1038.
Hours Per Response: 8.
Total Annual Burden Hours: 8,304.

Notice of Insurance Activities

Number of Respondents: 10.
Number of Responses Per Respondent: 1.
Total Annual Responses: 10.
Hours Per Response: 6.
Total Annual Burden Hours: 60.

Background

On December 19, 1991, the Federal Deposit Insurance Corporation

Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236) was signed into law. Section 303 of FDICIA added section 24 to he Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act) (12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. While much of section 24 does not become effective until December 19, 1992, the provisions of section 24 that deal with equity investments were effective upon enactment, December 19, 1991.[1]

Paragraph (c) of section 24 (12 U.S.C. 1831a(c)), "Equity Investments by Insured State Banks", provides that no insured state bank may directly, or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. This paragraph became effective December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f) (12 U.S.C. 1831a(f)) "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited "grandfather" for investments in common or preferred stock listed on a national securities exchange or shares of registered investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange ("listed stock") or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) ("registered shares"), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain, subject to the FDIC's approval, listed stock or registered shares to the same extent to which the bank did so during the period from September 30, 1990 to November 26, 1991 ("relevant period") up to an aggregate maximum of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year. (The FDIC's option as to the scope and applicability of the "grandfather" provided for by section 24(f)(2) is discussed at length below.)

Paragraph (d)(2) provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

It is the FDIC's opinion that an insured state bank which prior to December 19, 1991 entered into commitments to acquire equity investments at some time after December 19, 1991 of a type, or in an amount, which are now prohibited to insured state banks pursuant to section 24 may not proceed with the acquisition. Generally speaking, banks in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance (i.e., performance under the contract would be illegal as a result of subsequently enacted legislation). See *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U.S. 211 (1986); *Omnia Commercial Co.* v. *U.S.*, 261 U.S. 502, 511 (1923); *Louisville and Nashville R.R. Co.* v. *Mottley*, 219 U.S. 467 (1911). In short, the FDIC is adopting the position that, with regard to a fully executory contract, there had been no "acquisition" of an equity investment prior to December 19, 1991 which is eligible for retention over the divestiture period. Partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was "acquired" before December 19, 1991. Insured state banks should be reminded, however that, even if it is determined that the completion of a partially performed contract does not violate the prohibition of section 24, the equity investment must be divested if it is a nonconforming investment. Insured state banks should note that this position is the same that the FDIC adopted in 1989 regarding state savings associations. (See, 54 FR 53545, December 29, 1989).

The FDIC is proposing to add a new part to its regulations that would implement those portions of section 24

[1] Unlike paragraphs (a) and (d), of section 24, paragraphs (c) and (f) do not contain any language delaying their effectiveness until December 19, 1992. Nor does the delayed effectiveness of paragraph (a) which concerns "activities" of insured state banks control the timing of paragraphs (c) and (f) even though "activity" is defined to include acquiring or retaining any investment. As paragraphs (c) and (f) distinguish between other types of investments and investments that are equity investments, the specific treatment accorded equity investments under the statute governs. In short, equity investments are set apart and treated separately under the statute. This is consistent with the same treatment accorded equity investments by state savings associations under section 28 of the FDI Act (12 U.S.C. 1831(e)) as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Pub. L. 101–73, 103 Stat. 183). Section 28(a) prohibited state savings associations from engaging in certain activities after January 1, 1990. Section 28(c) prohibited state savings associations from making certain equity investments. Section 28 also defines "activity" to include acquiring or retaining any investment. The section's legislative history clearly indicates that paragraph (c) was immediately effective upon enactment, i.e., making it clear that making an equity investment is not an "activity". (135 Cong. Rec. S10203 (daily ed. August 4, 1989)).

that are presently in effect, i.e., the provisions described above. It is the agency's intent to at a later date propose amendments addressing the remainder of section 24, i.e., the provisions of section 24 concerning activities of insured state banks and their subsidiaries. Those provisions do not take effect until December 19, 1992.

A description of the proposal, as well as a request for specific comments, follows.

Elsewhere in today's **Federal Register** the FDIC is proposing to amend § 333.3 of the FDIC's regulations (12 CFR 333.3) "Savings Association Insurance Fund (SAIF) member state banks formerly savings associations." This amendment would relieve SAIF member state banks from the restrictions of section 333.3 in so far as that regulation makes SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations. (12 CFR 303.13). The effect of the amendment would be to eliminate what is currently a disparate treatment among banks as to their equity investments based upon their deposit insurance fund membership. It is the FDIC's present intent to consider whether or not to modify or eliminate the remainder of § 333.3 at the same time additional regulations implementing the remainder of section 24 of the FDI Act are considered.

Scope and Applicability of Exception Created by Section 24(f)(2)

The FDIC has preliminarily reached several conclusions concerning the interpretation of section 24(f) and the "grandfather" conferred thereby. These conclusions form the basis of the portion of proposed regulation which deals with equity investments in stock listed on a national securities exchange and shares of investment companies. We recognize that the language of the statute may be susceptible to a different interpretation, however, at this time it is the FDIC's opinion that the interpretation discussed below is the interpretation that is the most consistent with the overall intent of section 24. We specifically invite comment on our interpretation and the proposal's reliance thereon.

The FDIC is preliminarily of the opinion that:

1. The exception afforded by paragraph (2) of section 24(f) applies only to an insured state bank (an "Eligible Bank") which (a) is located in a state that permitted, as of September 30, 1991, investment in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 [2] ("Listed Stock" and "Registered Shares", respectively) and (b) made or maintained investments in Listed Stock or Registered Shares during the period beginning on September 30, 1990 and ending on November 26, 1991 (the "Relevant Period"); provided that under no circumstances does section 24(f) allow the aggregate amount of investments in Listed Stock and Registered Shares to exceed 100 percent of the Eligible Bank's capital; and provided further that the Eligible Bank has filed a notice with, and obtained the approval of, the FDIC concerning its intentions to acquire or retain investments in Listed Stock or Registered Shares.

2. An Eligible Bank may, subject to approval of the FDIC, retain, or acquire in the future, investments in Listed Stock or Registered Shares in an amount not to exceed the percentage of the Eligible Bank's capital that was invested in Listed Stock or Registered Shares during the Relevant Period.

3. An Eligible Bank must obtain the approval of the FDIC in order lawfully to retain, or acquire in the future, Listed Stock or Registered Shares. Any such approval may be granted only after receipt by the FDIC of written notice from the Eligible Bank concerning its intention to acquire or retain the investments. The approval may contain such conditions or restrictions (including ordering divestiture of some or all of the investments) as the FDIC determines is appropriate to avoid significant risk to the insurance fund of which the Eligible Bank is a member or to avoid any adverse effect on the safety and soundness of the bank.

Analysis of Exception

Section 24(f)(2) provides an exception to the general prohibition to making or retaining equity investments that are not permissible investments for national banks. The exception has limited applicability to specified investments by a potentially small group of state banks. A two part test applies. First, the bank must be an Eligible Bank. (See section 24(f)(2)(A) and 24(f)(2)(B).) Second, it must notify the FDIC of its intent to effect investments pursuant to the exception in paragraph (f)(2) and receive FDIC approval to do so. (See section 24(f)(6).)

Once eligibility has been determined, and provided that FDIC grants its approval,[3] the Eligible Bank may retain the Listed Stock or Registered Shares, and continue to make investments of the same type as it made during the Relevant Period, in an aggregate amount not exceeding the percentage of the Eligible Bank's capital represented by such investment made during the Relevant Period.

For example, if during the Relevant Period the bank had 30 percent of its capital invested in Listed Stock and 45 percent of its capital invested in Registered Shares, it is limited to a maximum investment of 30 percent of capital in Listed Stock and a maximum investment of 45 percent of capital in Registered Shares in the future under section 24(f)(2).[4]

Also by way of example, if the bank had invested 50 percent of its capital in Registered Shares, but did not make or maintain any investment in Listed Stock, it would not be eligible to invest in Listed Stock in the future pursuant to section 24(f), and its maximum investment in Registered Shares would be limited to 50 percent of capital.

The FDIC may decline approval for any Eligible Bank to continue to make the same type of investments up to the same level of capital made during the Relevant Period if to do so may pose a significant risk to the deposit insurance fund. The FDIC also may order any Eligible Bank to divest some or all of its investments made during or subsequent to the Relevant Period if continue ownership of such investments would have an adverse effect on its safety and soundness.[5]

Any bank which invested during the Relevant Period in Listed Stock or Registered Shares in excess of 100 percent of its capital, as measured on December 19, 1991, is required to divest the excess investments over the three year period beginning December 19, 1991.

The purpose of section 24 is to ensure that state banks are not exposed to undue risk as a result of their activities

[2] 15 U.S.C. 80a–1 et seq.

[3] The authority of the FDIC to grant or deny approval carries with it the implied authority to condition or restrict approval.

[4] The Bank may sell any investment and replace it with another investment of the same type. The bank is not limited to buying common or preferred stock or shares of investment companies in which it previously invested, *i.e.*, stock or shares of the same issuer.

[5] The language of section 24(f)(7) does not limit the authority of the FDIC to order divestiture of stock or shares acquired between September 30, 1990 and November 26, 1991. Moreover, section 24(i) expressly indicates that section 24 shall not construed to limit the authority of the appropriate Federal banking agency to impose more stringent restrictions than those contained in section 24. The FDIC therefore would be able, for example, to exercise its cease-and-desist authority if it determines that continued exercise of any "grandfathered" investment authority presents a safety and soundness concern.

and investments which would threaten the deposit insurance funds. In view of this purpose, the FDIC concludes that the exception contained in section 24(f)(2) should be read narrowly. To read the exception broadly would be inconsistent with general tenets of statutory construction [6] and generally accepted notions of the purpose of statutory "grandfather provisions" such as the exception set forth in section 24(f). Such provisions frequently are included in legislation to avoid harsh, unfair or disruptive results on business relationships or activities undertaken prior to a change in the law.

The FDIC's reading of section 24(f)(2) allows Eligible Banks that were engaged in the business of making investments in Listed Stock or Registered Shares prior to enactment of the statute, to continue to do so to the same extent after enactment, subject to FDIC approval. It is the FDIC's present opinion that this reading will not be disruptive to banks already engaged in these investments and that to read section 24(f) as outlined above is consistent with the purpose of the limited exception. A contrary interpretation could permit banks to expand their investments or initiate such investments for the first time which, in the FDIC's present opinion, does not seem justified in the face of the Congressional ban on such investments which is applicable to all other insured state banks.

Description of Proposal and Request for Comments

As reflected in § 362.1 of the proposal, it is the FDIC's intent in adopting part 362 to implement the provisions of section 24 of the FDI Act and to ensure that activities and investments undertaken by insured state banks (1) do not present a risk to either the Savings Association Insurance Fund (SAIF) or the Bank Insurance Fund (BIF), (2) are safe and sound, (3) are consistent with the purposes of federal deposit insurance, and (4) are consistent with the law. For the most part, the proposed regulation closely follows the equity investment provisions of section 24. Relevant definitions have been added as has a provision requiring that divestiture plans be submitted covering prohibited equity investments. In addition, a provision has been added requiring that information be filed with the FDIC that will enable the FDIC to monitor compliance with section 24(d)(2)(B) of the FDI Act. That provision creates a limited "grandfather" for certain state banks and/or their subsidiaries that were engaging in certain insurance activities as of November 21, 1991. Lastly, the proposal contains delegations of authority from the Broad of Directors to the Director of the Division of Supervision. The Director may in turn delegate that authority to the regional directors.

1. Definitions.

Company

The term "company" is defined in the proposal as any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization. The term is intended to include entities organized to conduct a specific business or businesses but does not include sole proprietorships.

Control

"Control" as defined in the proposal has the same meaning as set forth in § 303.13(a)(2) of the FDIC's regulations. As defined therein, "control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a bank or company, the ability to control in any manner the election of directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

Convert its Charter

The phrase "convert its charter" as used in the proposal refers to any instance in which a bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991. The definition is intended to encompass any transaction as a result of which a bank will from that point forward conduct business pursuant to a type of charter created by state statute that is new as to the particular bank. For example, if a bank that is operating under a savings bank charter begins to operate under a commercial bank charter, the savings bank will be said to have converted its charter regardless of how the transaction is accomplished.

Depository Institution

The term "depository institution" as used in the proposal has the meaning set out in section 3(c)(1) of the FDI Act, i.e., any bank or savings association.

Equity Interest in Real Estate

As defined under the proposal "equity interest in real estate" means any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. These instructions require that the following direct and indirect investments be included as real estate ventures:

(1) Any real estate acquired, directly or indirectly, and held for development, resale, or other investment purposes, but does not include real estate acquired in any manner for debts previously contracted.

(2) Any debt or equity investments by the bank in real estate subsidiaries that have not been consolidated; associated companies; and corporate joint ventures, unincorporated joint ventures, and general and limited partnerships over which the bank exercises significant influence if such investors are primarily engaged in the holding of real estate for development, resale, or other investment purposes.

(3) Real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with guidance prepared by the American Institute of Certified Public Accountants in Notices to Practitioners issued in November 1983, November 1984, and February 1986.

(4) Real estate acquired and held for investment that has been sold under contract and accounted for under the deposit method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate".

(5) Receivables resulting from sales of real estate acquired and held for investment accounted for under the installment, cost recovery, reduced profit, or percentage-of-completion method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate" when the buyer's initial investment is less than 10 percent of the sales value of the real estate sold.

(6) Any other loans secured by real estate and advanced for real estate acquisition, development, or investment purposes if the insured depository institution has virtually the same risks and potential rewards as an investor in the borrower's real estate venture.

Characterization as an investment under item 6 above might include

[6] 2A C. Dallas Sands, Sutherland Statutory Construction § 47.11 (4th ed. 1984); *Commissioner of Internal Revenue* v. *Clark*, 109 S.Ct. 1455, 1463 (1989).

instances in which the insured depository institution: (a) Provides all or substantially all necessary funds to acquire, develop or construct the property and the borrower has little or no equity in the property, (b) funds the commitment or origination fees, or both, by including them in the amount of the loan, (c) funds all or substantially all interest and fees during the term of the loan by adding them to the loan balance, (d) has no security other than the acquisition, construction or development project, (e) structures the arrangement so that foreclosure during development is unlikely because the borrower is not required to make any payments until the project is complete, or (f) finds that in order to recover the investment in the project, the property must be sold to independent third parties, the borrower must obtain refinancing from another source, or the property must be placed in service and generate sufficient net cash flow to service the debt principal and interest.

In general, the FDIC intends to treat loans as investments in real estate on the basis of item 6 when the depository institution participates in the residual profits of the project and one or more of the other five characteristics of a direct investment in real estate or a real estate joint venture is present.

As bank lending standards have evolved over the past several years, in many cases bank assets which are carried as loans on the bank's books have taken on more characteristics associated with investments rather than loans. Accounting for income from real estate loans and for real estate investment is substantially different and the improper classification of these assets can distort an institution's earnings picture. Accounting convention recognizes that, depending upon the circumstances, there is little substantive difference between certain loans and direct investments in real estate and that in those instances the loans should in fact be accounted for as direct real estate investments. The proposed regulation adopts this approach. Comment is specifically requested on the propriety of doing so.

The proposal contains three exclusions from the definition of "equity interest in real estate": (1) Real property used, or intended to be used, as offices or related facilities for the conduct of the bank's or its subsidiaries' business, (2) an interest in real estate that arises out of a debt previously contracted ("dpc property") provided that the real estate is not held any longer than the shorter of the period allowed for holding such real estate under state law or the time period national banks may hold such property, and (3) interests that are primarily in the nature of charitable contributions to community development corporations provided contributions to any one community development corporation do not exceed 2 percent of the bank's tier one capital and total contributions to all such corporations do not exceed 5 percent of the bank's tier one capital. These exclusions parallel § 7.3005, 7.3020, 7.3025 and 7.7480 of the Office of the Comptroller of the Currency's regulations. (12 CFR 7.3005, 7.3020, 7.3025, 7.7480). Insured state nonmember banks should note that, under the proposed exclusion, if state law allows a bank to hold dpc property for a longer period of time than a national bank is permitted to hold such property, the state bank must have divested the dpc property to or before the time that a national bank would be required to have divested the property or the dpc property will be considered to be an equity investment.

Equity Investment

Section 24(c)(1) of the FDI Act provides that an insured state bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank and section 24(f)(1) provides that an insured state bank may not, directly or indirectly, acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank. The FDIC is proposing to define equity investment for purposes of the proposal to mean any equity security, partnership interest, any equity interest in real estate and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. This broad definition of equity investment is consistent with the FDIC's treatment of a similar prohibition for savings associations found under section 28 of the FDI Act. (See also § 303.13(a)(4) of the FDIC's regulations.)

Equity Security

"Equity security" is defined under the proposal as any stock, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing unless it is acquired through foreclosure or settlement in lieu of foreclosure. The definition is the same as that used in § 303.13(a) of the FDIC's regulations.

Equity Investment Permissible for a National Bank

The phrase "equity investment permissible for a national bank" is defined to mean any equity investment expressly authorized for national banks under the National Bank Act or any other federal statute, regulations issued by the Office of the Comptroller of the Currency pursuant to the authority of the National Bank Act or other federal statute, and any formal interpretation or order issued by the Office of the Comptroller of the Currency.

It may be difficult to define with certainty those equity investments that are permissible for a national bank if orders and interpretations issued by the Comptroller of the Currency are recognized. Orders and interpretations represent an ongoing process that continually refines the definition of permissible investments, at times tied to narrow circumstances. It may, therefore, be inappropriate to recognize orders and interpretations. Additionally, staff opinions issued by the Office of the Comptroller of the Currency, including its Chief Counsel, have been held as not binding on the agency in that they do not constitute final agency action. (*American Land Title Association* v. *Clarke*, 743 F.Supp. 491 (W.D.Tex. 1989)). In view of all of the foregoing, the FDIC requests comments on the propriety of including equity investments authorized by an order or formal interpretation of the Office of the Comptroller of the Currency as "permissible for the purposes of this proposal. If it is appropriate to recognize interpretations of the Office of the Comptroller of the Currency, what should the FDIC consider to constitute a formal interpretation? Lastly, insured state banks should be advised that regardless of how the FDIC defines "permissible for a national bank", insured state banks should be prepared to document to the FDIC's satisfaction that their equity investments are permissible for a national bank.

Lower Income

One of the exceptions under the proposal to the general prohibition on acquiring equity investments not permissible for a national bank allows insured state banks to become limited

partners in partnerships that develop housing projects designed to primarily benefit "lower income" persons. "Lower income" is defined for the purposes of the proposal to mean an income that is less than or equal to the median income (as determined by state or federal statistics) for the area in which the housing project is located. The "area" in which a housing project is located shall be understood to refer to the relevant Metropolitan Statistical area (MSA) if the project is located within an MSA. If the project is not located in an MSA, the median income of the "area" shall be understood to refer to the median income of the state or territory as a whole exclusive of the designated MSA's. The FDIC invites comment generally on the issue of what state or federal statistics the FDIC should recognize for the purposes of applying this definition; how the term "area" should be construed for the purposes of applying the definition; and what federal and state statistics are readily available to insured state banks.

National Securities Exchange

The term "national securities exchange" has been defined under the proposal to mean an exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System. The National Market System refers to the top tier of the three tiers of over-the-counter securities traded through the National Association of Securities Dealers Automated Quotation system (NASDAQ). The FDIC is of the opinion that if a security is listed on a registered exchange or is traded in the National Market System the security will be more liquid due to a wide market, sufficient information will be available about the security and the issuer for the market to make informed pricing decisions about the security, and the opportunities for fraud and manipulation of the security are minimized. Comment is requested on whether the FDIC should recognize other exchanges and quotation services as national securities exchanges. Should securities quoted on the bottom two tiers of NASDAQ be considered to be listed on a national securities exchange? Should the FDIC adopt a different approach entirely to defining what constitutes a national securities exchange? If so, what approach is recommended?

Significant Risk to the Deposit Insurance Fund

"Significant risk to the deposit insurance fund" will be considered to be present whenever it is likely that either of the deposit insurance funds administered by the FDIC may suffer any loss whatever. Although the statute and the regulation use the term "significant" in confunction with the word "loss", the test of significant risk is met if there is a likelihood of any loss whatsoever to either of the funds regardless of how small. Therefore, the amount, or the relative or absolute size of the loss that may result to either of the funds from an insured state bank engaging in an activity is not probative. What is relevant, rather, is the likelihood that some loss to either of the funds may occur. Additionally, it is not necessary that making the equity investment will result in the failure or threatened failure of an insured state bank before a significant risk of loss to either fund is considered to be present. The proposed definition is the same that is used in section 303.13(a) of the FDIC's regulations and is consistent with passages of the legislative history of section 24. (See, S. Rep. No. 102–167, 102d Cong., 1st Sess. 54 (1991)).

Subsidiary

The term "subsidiary" is defined as any company directly or indirectly controlled by an insured state bank. This term has the same meaning as found in section 337.4 of the FDIC's regulations.

Tier One Capital

"Tier one capital" as defined in the proposal has the same meaning as found in Part 325 of the FDIC's regulations when that term is used with reference to an insured state nonmember bank and any other insured bank for which the FDIC is the appropriate federal banking agency. The term shall be understood to refer to "Tier one capital" as defined by the Board of Governors of the Federal Reserve System when the term is used in reference to an insured state member bank. At this time Part 325 defines "tier one capital" as common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries, minus all intangible assets other than mortgage servicing rights eligible for inclusion in core capital and supervisory goodwill eligible for inclusion in core capital. The Board of Governors of the Federal Reserve System defines tier one capital in appendix A to 12 CFR Part 208. As defined therein tier one capital generally means common stockholders' equity, qualifying noncumulative perpetual preferred stock (including related surplus) plus minority interests in the equity accounts of consolidated subsidiaries minus goodwill. Only those capital elements that technically meet the definition of tier one capital can be included as tier one capital for the purposes of this proposal.

Well-capitalized

A "well-capitalized" insured state bank is defined in the proposal to mean an insured state bank that has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and which has not been notified that it is in a "troubled condition" for purposes of section 32 of the Federal Deposit Insurance Act. That section requires prior notice of a change in directors or senior executive officers in certain circumstances, including an instance in which the bank is in a troubled condition. An insured state bank will not be considered to be "well-capitalized" unless the above capital levels are not exclusive of the bank's investment in any subsidiary or department that engages in any activity that is not permissible for a national bank. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

With regard to the requirement that the ratio of Tier 1 capital to risk-weighted assets be not less than 6.0 percent, readers should note that the FDIC does not intend to suggest that as a bank's total risk-based capital ratio increases that its Tier 1 capital must always increase proportionately so that 60 percent of a bank's total risk-based capital is always Tier 1 capital. For example, a bank with 11 percent total risk-based capital would not be required to have a 6.6 percent Tier 1 capital ratio in order to qualify as well-capitalized. Rather, the minimum ratio of Tier 1 capital to risk-weighted assets would still be 6.0 percent.

If a bank has been required pursuant to an order, directive, or a consent agreement to raise its capital to a higher level than that described above, the bank will not be considered to be "well-capitalized" unless the bank meets such higher level.

Whether or not the bank is in a "troubled condition" has been included as part of the definition of "well-capitalized" in recognition of the fact that the capital cushion cannot be judged to be more than adequate unless all the facts and circumstances are taken into account. Likewise, the proposed definition requires that the bank's activities that are not permissible for a national bank be in effect separately capitalized, i.e., the bank must be in a position that it could entirely lose its investment in the subsidiary or department and such loss will not cause its capital to fall below a level that is significantly above the level of capital that is considered to be the minimum necessary for the sound operation of a bank.

Comment is specifically requested on the specific capital level or levels that the FDIC should consider necessary in order for a bank to be well-capitalized for the purposes of part 362. Comment is also specifically requested on whether excluding the investment in certain subsidiaries or departments is warranted and whether the term "investment" as used herein is appropriate.

The FDIC expects to eventually conform the meaning of "well-capitalized" as used in part 362 with the meaning of "well-capitalized" as used for the purposes of section 38 of the FDI Act, "Prompt Corrective Action". Final rules have yet to be issued by the FDIC defining "well-capitalized" for the purposes of section 38. The FDIC wishes to make clear that proposing to adopt the definition of well-capitalized as set out herein should not be read as limiting in any way the FDIC's discretion in formulating a proposed definition of that term for purposes of section 38. If a different meaning of the term "well-capitalized" is adopted for purposes of administering the prompt corrective action provisions of the FDI Act, the FDIC will propose amending the definition as used in part 362. Comment is requested on whether it is appropriate that the term be defined the same in the both contexts.

Insured State Bank

"Insured state bank" as used in the proposal refers to any state bank, whether or not a member of the Federal Reserve System, that is insured by the FDIC. The term should be understood to include any insured branch of a foreign bank that is not a federal branch.

The FDI Act does not contain a definition of the term "insured state bank". It does, however, define "state member bank", "state nonmember bank", "insured bank" and "state depository institution". "Insured bank" is defined to mean any bank the deposits of which are insured by the FDIC. It is logical to assume that in enacting section 24 Congress was aware of the distinction between member and nonmember banks and that by using the term state bank it meant to include both types of state banks. What is more, since the FDI Act does not when defining the term insured bank distinguish between insured banks that are member banks and insured banks that are nonmember banks, it follows once again that the reference in section 24 to insured state banks was meant to encompass all types of state banks that are insured regardless of membership in the Federal Reserve System. It also follows that section 24 was thought to encompass state branches of foreign banks as the term "state depository institution" as defined in the FDI Act specifically includes any insured branch which is not a federal branch.

The amendment to section 9 of the Federal Reserve Act (12 U.S.C. 330) enacted by section 303(b) of FDICIA does not dictate another reading of the plain language of section 24.

That amendment is merely a technical amendment which makes clear that the Federal Reserve Board may impose conditions and restrictions upon membership in the Federal Reserve System that are consistent with the requirements and restrictions of section 24.

2. Exceptions to General Prohibition on Acquiring or Retaining Prohibited Equity Investments

Majority Owned Subsidiary

Section 24(c) of the FDI Act notwithstanding, an insured state bank is not prohibited from acquiring or retaining a majority stock interest in a subsidiary even if the stock investment in that subsidiary is one that would not be permissible for a national bank. This exception is contained in section 362.3(b)(1) of the proposal. If an insured state bank holds less than a majority interest in the subsidiary, and that equity investment is of a type that would be prohibited to a national bank, the exception does not apply and the equity investment is subject to divestiture.[7] Majority ownership for this exception is understood to mean ownership of greater than 50% of the outstanding voting stock of the subsidiary.

The exception for majority owned subsidiaries is itself limited. Insured state banks should note that section 24(d) provides that no subsidiary of an insured state bank may engage, after December 19, 1992, in any activity that is prohibited to a subsidiary of a national bank unless the bank meets its applicable capital requirements and the FDIC determines that the conduct of the activity in question by the subsidiary will not pose a significant risk to the deposit insurance fund. The FDIC will consider further proposed rulemaking to implement the requirement that activities by majority owned subsidiaries be approved by the FDIC. That rulemaking will consider such things as whether the FDIC should establish parameters for operations of majority owned subsidiaries, e.g., structural and/or operational restrictions to ensure that the conduct of the activity in question will not present a significant risk to the insurance fund.

Section 362.3(b)(1) of the proposal indicates that an insured state bank will not be permitted to retain its majority interest in a subsidiary pursuant to this exception if the bank was required under § 333.3 of the FDIC's regulations to request the FDIC's permission to retain that investment and the application was denied. Section 333.3 applies to state banks that are members of SAIF. Under § 333.3, a SAIF member state bank may not acquire or retain an equity investment that is not permissible for a federal savings association. An institution that meets its capital requirements may apply for permission to retain an interest in a subsidiary that would otherwise be prohibited. In order for the application to be approved, the FDIC must determine that retaining the equity investment in the subsidiary will not pose a significant risk to SAIF. Although the FDIC is proposing to delete the above described portion of § 333.3 (See proposed rule published elsewhere in today's **Federal Register**), it is the FDIC's belief that any denial previously made by the FDIC pursuant to regulation operates to limit the exception as the FDIC has already determined that retaining the investment will pose a significant risk to SAIF. It would

[7] It is our understanding that national banks may own a minority interest in certain types of subsidiaries. Therefore, an insured state bank may hold a minority interest in a subsidiary (i.e., is not required to hold at least 80% of the stock of the company) if a national bank could do so.

jeopardize SAIF to hold otherwise as it would in effect allow the bank to retain an investment expected to adversely affect the fund only to require the bank to later seek the FDIC's permission to retain the investment pursuant to whatever procedures the FDIC adopts to implement the portion of section 24 dealing with activities of subsidiaries. If the SAIF member state bank must divest its interest in a subsidiary, the divestiture must be in accordance with whatever conditions and restrictions which were previously established by the FDIC.

Qualified Housing Projects

The proposed regulation recites the exception for qualified housing projects found in section 24(c)(3) of the FDI Act. Under that exception, an insured state bank is not prohibited from investing as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a residential housing project intended to primarily benefit lower income persons throughout the period of the bank's investment so long as the investments, when aggregated with any existing equity investment in such a partnership or partnerships, does not exceed 2 percent of the bank's total assets. The proposed regulation indicates that banks are to take as the measure of their total assets the figure reported on the bank's most recent consolidated report of condition. The FDIC has chosen the most recent report of condition as the comparison point in an attempt to provide a more stable asset base against which the bank's investments can be measured. If an investment in a qualified housing project does not exceed the limit at the time the investment is made, the investment shall be considered to be a legal investment even if the bank's total assets subsequently decline. In that event, however, no further investments in qualified housing projects would be permissible until the bank's total assets increase.

Comment is requested on how the FDIC should construe the terms "primarily" and "residential" as used in this exception (i.e., how much commercial activity can go on in a building before it is no longer residential or no longer is intended to primarily benefit lower income persons); whether or not the FDIC should include unfunded commitments as part of the bank's investment in partnership under this exception; and what problems if any the exception as written poses for banks meeting their Community Reinvestment Act obligations.

Insured state banks should note that because the definition of equity investment does not include an interest in community development corporations up to an aggregate of 5% of a bank's tier one capital, (see discussion of "equity investment in real estate" definition) insured state banks may, under the proposal, invest in qualified housing projects excepted by section 362.3(b)(2) up to 2% of their total assets in addition to investing in community development corporations up to an aggregate maximum of 5% of tier one capital.

Savings Bank Life Insurance

Under the proposal an insured state bank is not prohibited from owning stock in a savings bank life insurance company if the bank is located in Massachusetts, New York or Connecticut provided that the savings bank life insurance company prominently discloses to purchasers of life insurance policies and annuities that these instruments are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. Section 24(e)(1)(B) of the FDI Act provides that this exception shall only apply if the bank meets the consumer disclosure provision of section 18(k) of the FDI Act. Section 18(k) does not contain any consumer disclosure provisions. In the absence of any other guidance in the statute's legislative history, the FDIC is proposing that the following or a similar disclosure will suffice to meet the statutory obligation to make consumer disclosures: "This [policy/annuity/insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank." The proposal does not establish a specific time frame in which the disclosure must be made nor is the disclosure required to be on a specific form. The FDIC requests comments relating to the specific timing of these disclosures and to the necessity of having the disclosures given to the customer separately or printed on or in the insurance documents. Should customers be required to acknowledge receipt of the disclosures with their signature?

The FDIC is required under section 24 to make a finding whether savings bank life insurance activities of insured state banks pose, or may pose, any significant risk to the insurance funds. These findings will be announced separately from this portion of the rulemaking, however, the FDIC is taking this opportunity to request comment on the risks posed by savings bank life insurance activities. Specific comments are requested relating to the necessity of anti-tying provisions between bank lending activities and sales of insurance, the need for further disclosure to consumers and the need for direct financial reporting to the FDIC. Comments directed to this issue will be used in formulating the FDIC's study.

Director and Officer Liability Insurance

An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees' and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions. Any shares in excess of this limit that were purchased before December 19, 1991 shall be divested as quickly as prudently possible but in no event later than December 19, 1996. The term "provides" shall be understood to mean underwriting or assuming the insurance risk rather than acting in the capacity of an agent. If the companion proposal amending section 333.3 is adopted, insured state banks that are members of SAIF that were not permitted to acquire or retain voting stock in a directors and officers liability insurance company unless that company insured the bank's officers and directors would no longer be under those constraints. (See section 24(f)(3)(A) of the FDI Act).

Shares of Depository Institutions

Under section 24, an insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the voting shares; and the institution's voting shares are owned only be depository institutions (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees). See section 24(f)(3)(B) of the FDI Act). This exception is repeated in the proposal at § 362.3(b)(6).

Interests in Insurance Subsidiaries

As indicated above, section 24 of the FDI Act will, after December 19, 1992, limit the activities that may be conducted by a company in which an insured state bank has the majority equity interest, i.e., a subsidiary. The statute contains an exception, however, for a well-capitalized insured state bank whose majority owned subsidiary was lawfully providing insurance as

principal in a state on November 21, 1991. (See section 24(d)(2)(C) of the FDI Act). An exception is also provided for a subsidiary of an insured state bank that was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law provided further that control of the bank has not changed since that date.

In the case of a bank relying upon the exception contained in section 24(d)(2)(C), the activities of the subsidiary must be limited to providing, as principal, insurance of the same type as provided by the subsidiary on November 21, 1991. Insurance of that type may be provided to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. This exception has been included in the proposal (rather than in a rulemaking to follow later) as there is a need to collect information from "eligible" banks so that the FDIC can enforce the limits of the exception. (See § 362.4 of the proposal). We are asking that the proposed information be collected at this time as it should be easier for the affected institutions to collect the information on their insurance activities, and those of their subsidiaries, as of November 21, 1991 now rather than asking that the institutions reconstruct those activities at a later date.

For the purposes of the proposal the term "principal" shall be understood to mean underwriting or assuming the risk of insurance rather than acting in the capacity of an agent. (See, 137 Cong. Rec. S17317 daily ed. November 21, 1991) (colloquy between Sen. Graham and Sen. Garn)). The term "insurance of the same type" shall be understood to encompass whatever type of insurance policies and/or products that the bank and/or its subsidiary were authorized by state law to issue as of November 21, 1991 and were in fact providing to the public. In short, the bank and/or its subsidiary must have been actively engaged in insurance underwriting on November 21, 1991.

Comment is specifically requested on how the FDIC should construe the word "type". Is it appropriate to distinguish between, for example, life insurance products such as whole life and term life? Are variable rate annuities and single premium fixed rate annuities different types of insurance products? If the FDIC were to distinguish in this manner, a bank that was lawfully underwriting whole life insurance policies on November 21, 1991 but was not on that date underwriting term life insurance could not begin to offer term life insurance policies. Should credit life insurance be considered a different type of insurance than regular life insurance? What types of casualty insurance should be considered to be of the same type?

The statutory and regulatory exception is limited to banks and/or subsidiaries that were "lawfully providing insurance as principal" on November 21, 1991. As already indicated, the FDIC construes the language of the statute as requiring that the bank and/or subsidiary must have actually underwritten policies and/or other insurance products that were outstanding as of November 21, 1991. The exception is further limited to the types of insurance lawfully provided on November 21, 1991 "in a state." The FDIC shall construe the phrase "in a state" as excepting insurance underwriting activities by an insured state bank only in the state in which the bank was chartered as of November 21, 1991 and limiting the subsidiary of the bank to insurance underwriting activities only in the state in which the subsidiary was incorporated and doing business as of November 21, 1991.

The FDIC believes that this reading of section 24 is consistent with the provision's legislative history which, among other things, clearly indicates that the exception was intended to lapse if any changes in an insured state bank's underwriting capability within its own state occurred. (See, 137 Cong. Rec. S17316 (daily ed. November 21, 1991) (remarks of Sen. Graham)). The legislative history also indicates that the provision was intended to close a loophole in the law that permitted one state to be used as a base for nationwide insurance underwriting and that the language did so by limiting the activities to the state that authorizes it but nowhere else. (See, 137 Cong. Rec. S18619 (daily ed. November 21, 1991) (remarks of Sen. Dodd)). The construction of the exception adopted by the proposal somewhat narrowly circumscribes the exception and is therefore consistent with the above. It is also consistent with one of the basic tenets of statutory construction which provides that exceptions should be narrowly construed within the purpose of the overall provision. In view of the overall indication that insurance underwriting activities that are not be permissible for national banks are inappropriate for insured state banks, it is in the FDIC's view appropriate to adopt a narrow reading of the exception.

Common or Preferred Stock; Shares of Investment Companies

As indicated above, it is the FDIC's present opinion (on which the FDIC has sought comment) that section 24(f)(2) of the FDI Act creates a limited "grandfather" for investments in listed stock and registered shares. The "grandfather" is found in the proposed regulation at § 362.3(b)(4). Section 362.3(b)(4) provides that to the extent the FDIC permits, and subject to the requirements of § 362.3(d), "Notice and Approval of Intent to Invest in Common or Preferred Stock or Shares of an Investment Company; Divestiture of Excess Investments", an insured state bank may (1) retain the listed stock or registered shares that the bank lawfully acquired or held prior to December 19, 1991, and (2) continue to acquire listed stock or registered shares in the future, provided that the bank is located in a state that authorized investments in listed stock or registered shares as of September 30, 1991 and the bank exercised the authority to make such investments sometime during the period from September 30, 1990 to November 26, 1991.

The exception as formulated in the proposal is not a blanket authorization and the amount of the investments that are permissible thereunder is narrowly circumscribed. The limits of the permissible investments that may be made or retained pursuant to the exception, as well as the need for the FDIC's approval in order for an insured state bank to take advantage of the exception, are set out in § 362.3(d) of the proposal. (See discussion in paragraph #4 below).

Section 24(f)(5) of the FDI Act provides that the exception created by section 24(f)(2) will cease to operate if the bank converts its charter or undergoes a change in control. "Change in control" as used in section 24(f)(5) is not defined. Section 362.3(b)(4) of the proposal specifies four types of transactions, in addition to a charter conversion, (see definition of charter conversion discussed above in paragraph #1) the occurrence of which will terminate the grandfathered investment authority. Under the proposal, any time a bank undergoes a transaction for which a notice is required to be filed under section 7(j) of the FDI Act (12 U.S.C. 1817(j)); any time the bank undergoes a transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842); any time control of the bank's parent company changes; or any time the bank is merged into another depository institution, the

exception will cease to apply. Thus, for example, if 25 percent or more of the bank's voting stock is acquired by an individual, the bank will no longer be able to make investments in listed stock or registered shares pursuant to the authority of § 362.3(b)(4). If the bank is acquired by a bank holding company or control (as that term is defined in the proposal) of the bank's parent company changes, the bank will lose the ability to rely upon § 362.3(b)(4). Likewise, if the bank is merged into another depository institution, the acquiring institution will not inherit the exception provided by § 362.3(b)(4).

Change in control has been in effect defined to include the above four types of transactions or events. The "definition" has been broadly fashioned in light of the general policy embodied in section 24(c) and section 24(f)(1) of the FDI Act that equity investments which are not permissible for national banks are not appropriate investments for insured state banks. Although Congress enacted a limited exception for certain banks, Congress also indicated that the exception ceases to apply whenever control of an eligible bank no longer resides with the same person or entity that controlled the bank on December 19, 1991. In light of the broader Congressional action to generally prohibit equity investments, it would seem appropriate to broadly define the universe of events that are considered to constitute a change in control.

Comment is requested on the propriety of including the four types of transactions or events as transaction or events that terminate the availability of the exception. Does the reference to section 3 of the Bank Holding Company Act, or any of the other identified events, cause some transactions to be considered a change in control that do not warrant inclusion?

If an insured state bank undergoes a change in control within the meaning of the proposal, or the bank converts its charter, and thus is no longer able to take advantage of the exception, the bank cannot make any additional investments in listed stock or registered shares. Under the proposal, however, the bank is not required to divest its existing investments unless the FDIC determines that retaining the investments will adversely affect the bank's safety and soundness and the FDIC has issued an order requiring the bank to divest the stock and/or shares pursuant to the authority of section 24(f)(7) or section 8 of the FDI Act. (See § 362.3(d)(3)). The fact that the FDIC has not taken such action, however, does not preclude the bank's appropriate banking agency (when that agency is an agency other than the FDIC) from taking steps to require divestiture of the stock and/or shares.

3. Divestiture of Prohibited Equity Investments

Requirement to Divest

Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions of this proposed rulemaking, must be divested as quickly as prudently possible but in no event later than December 19, 1996. Although the FDIC is required by statute to see that a bank divests any prohibited equity investment as quickly as prudently possible, it is not the responsibility of the FDIC to determine exactly how an institution will accomplish the divestiture. The FDIC is, however, the final arbiter of when divestiture can be prudently accomplished. It is clear that it would not be prudent to hold equity investments that are subject to divestiture arbitrarily until the final divestiture date without adequate documentation as to the reasons that prolonging the divestiture program would be prudent. The FDIC will review a bank's plan for divestiture and take such action as may be appropriate if the plan does not allow for divestiture as quickly as can be prudently possible.

Under the proposal, SAIF member state banks that hold an equity investment which was subject to divestiture pursuant to § 333.3 of the FDIC's regulations and which is also subject to divestiture under this proposal are not allotted until 1996 to complete divestiture. In such a case, the equity investment must be divested as quickly as prudently possible but in no event later than July 4, 1994 or any earlier date established by a divestiture plan that was filed with and approved by the FDIC pursuant to § 333.3. The FDIC believes that it is inappropriate to allow such institutions a longer time to accomplish divestiture as it has been established that the institutions can prudently accomplish divestiture in advance of December 19, 1996. It would also be an inappropriate diversion of the FDIC's resources to revisit the question of divestiture of these assets.

Divestiture Plan

The proposal requires any insured state bank that is required to divest an equity investment to submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from the effective date of the regulation. An insured state bank that is required to submit a divestiture plan which shall describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent call report date prior to the filing; set forth the bank's plan to comply with the divestiture period; describe the anticipated gain or loss, if any, from the divestiture of the investment(s) and the impact on the bank's capital; and include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan. The regional director may request additional information as deemed appropriate.

It is the FDIC's intent to review each plan for the purpose of determining whether or not the insured state bank that filed the plan can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. The proposal specifically provides that an insured state bank that has filed a divestiture plan may act in accordance with its plan until such time as the bank is informed in writing by the appropriate FDIC official that the plan is unacceptable.

Retention of Equity Investments During Divestiture Period

Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996. It is contemplated that the FDIC will communicate in writing its objection or nonobjection to the bank's divestiture plan. The FDIC's decision concerning the adequacy of the divestiture plan will be based on the information presented. As subsequent events may alter the continued validity of the FDIC's original determination, any nonobjection on the part of the FDIC will typically be conditioned upon the continued validity of any assumptions upon which the plan is based, the continued vitality of the bank in question, and the continuation of facts and circumstances existing at the time the nonobjection was communicated.

4. Notice and Approval of Intent to Invest in Listed Common or Preferred Stock or Shares of Investment Company; Divestiture of Stock or Shares in Excess of 100% of Capital

Requirement to File Notice and Receive FDIC Approval

Section 362.3(d) of the proposal provides that no insured state bank may acquire or retain listed stock or registered shares pursuant to the exception set out in § 362.3(b)(4) unless the bank files a one-time notice with the FDIC of its intent to take advantage of the exception and the FDIC determines, after reviewing the notice, that retaining the listed stock or registered shares the bank presently holds, and acquiring listed stock or registered shares in the future, will not present a significant risk to the deposit insurance fund of which the bank is a member. (The definition of "significant risk to the fund" is discussed in paragraph #1 above.) Until the FDIC has made its determination, a bank may retain the listed stock or shares that it lawfully held on December 19, 1991 (provided those investments do not exceed 100 percent of the bank's tier one capital). The bank may not, however, make any new investments in listed stock or registered shares until the bank receives the FDIC's approval.

Content of Notice

Section 362.3(d)(2) of the proposal provides that the one-time notice must be filed with the FDIC regional director for the Division of Supervision for the region in which the bank's principal office is located. The notice can be in the form of a letter or any other form convenient to the bank but it must contain the following information:

(1) A description of the listed stock and/or shares held by the bank as of December 19, 1991 and the book and market value of the stock or shares;

(2) The highest dollar amount of the bank's investments in listed stock and/or shares during the period from September 30, 1990 to November 26, 1991;

(3) A description of the bank's funds management policies including a discussion of how investments in listed stock or registered shares relates to the objectives of those policies;

(4) A description of the bank's investment policies including a discussion of the extent to which those policies limit concentrations in listed stock or registered shares, set an aggregate limit on such investments, and/or deal with the sale of the investments in light of market conditions;

(5) A discussion of how the quality of the bank's existing investments was determined and how the bank will judge the quality of future investments; and

(6) Such other information as requested by the regional director.

The notice must be accompanied by a resolution of the bank's board of directors or trustees authorizing the filing of the notice. For the purposes of supplying the information required by item #2, the notice must set out the highest dollar amount of the bank's investment during the period in listed stock calculated as a percentage of the bank's tier one capital as reported in the bank's call report for the quarter in which the high dollar investment occurred; the highest dollar amount during the period of the bank's investment in registered shares calculated as a percentage of the bank's tier one capital as reported in the bank's call report for the quarter in which the high dollar investment occurred; and the total combined percentage of the foregoing.

The FDIC is of the opinion that the information listed in § 362.3(d)(2) is the minimum information necessary in order for the FDIC to properly evaluate whether the retention of the bank's existing investments in listed stocks and/or registered shares, and the continued exercise of the bank's grandfathered investment authority, may pose a significant risk to the deposit insurance fund. Comments are requested on the appropriateness of the requested information; what burden, if any, is entailed by the notice as proposed; and what information in addition to or in lieu of that which is proposed should be included in the notice.

FDIC Determination

Section 362.3(d)(3) of the proposal, "FDIC Determination", sets out the standard against which the FDIC will evaluate notices filed pursuant to paragraph (d)(1), i.e., whether there is a significant risk to the fund posed by the exercise of the grandfathered investment authority. It also indicates that the FDIC may condition or restrict approval as necessary or appropriate and provides that the FDIC may require the notifying bank to divest some or all of its investments in listed stock and/or registered shares. If, upon a review of the notice, it is determined that the exercise of the grandfathered investment authority poses a significant risk to the fund, the notice will not be approved. The FDIC may, however, approve the notice subject to whatever conditions or restrictions are reasonably necessary to prevent that risk from occurring.

The recitation that the FDIC may impose conditions or restrictions in connection with an approval is nothing more than a restatement of the FDIC's existing implied authority to take such action. Insured state banks should note in this regard that section 24(i) of the FDI Act specifically provides that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent conditions. Nor does section 24 limit the authority of the FDIC to take cease-and-desist action against any insured state bank in the event the exercise of its grandfathered investment authority is found to constitute under the circumstances an unsafe and unsound banking practice.

Divestiture of listed stock and/or registered shares may be ordered if the FDIC has reason to believe that retention of the investments in question will have an adverse effect on the safety and soundness of the notifying bank. Divestiture is not limited to investments held by the bank at the time it files its notice. If the FDIC grants approval for an insured state bank to make investments pursuant to § 362.3(b)(4), and it is determined at any time after the approval is given that the retention of listed stock and/or registered shares acquired pursuant to that approval poses a safety and soundness risk to the bank, the FDIC may require the divestiture of any of the investments.

The FDIC may deny a bank's application to fully exercise the grandfathered investment authority otherwise available to it under section 24(f)(2) of the FDI Act and § 362.3(b)(4) of the proposal but grant approval to make and retain investments in listed stock and/or registered shares to a lesser extent than the highest level of such investments made by the bank during the relevant period. If the FDIC does so, the bank must divest existing investments in excess of the level the FDIC approves as quickly as prudently possible but in no event later than December 19, 1996. A divestiture plan must be filed with the FDIC no later than 60 days after the bank receives notice that approval to retain its existing investments was not granted. The divestiture plan must contain the information specified in § 362.3(c)(3) of the proposal.

Insured state banks should note that they may not lawfully acquire any additional listed stock or registered shares until the FDIC has rendered its determination and granted its approval. (See section 24(f)(6)). The FDIC recognizes that section 24 contemplates

that notices normally will be reviewed and a determination will be made within 60 days. It is therefore the FDIC's intention to respond to the notices within 60 days to the extent practicable.

However, the FDIC has concluded that the 60-day period in paragraph (f)(6)(B) of section 24 does not allow a bank to make additional investments if the FDIC does not respond before expiration of the 60-day period from the FDIC's receipt of the notice. Paragraph (f)(6) is captioned, "Notice *and Approval*" [emphasis added] which contemplates affirmative approval by the FDIC.[8] In addition, paragraph (f)(6) does not expressly indicate the bank may proceed in the absence of a determination by the FDIC within the 60-day period,[9] nor does it require that the FDIC "shall" or "must" make a determination within the 60-day period.[10]

Neither the earlier provision found in H.R. Rep. No. 102–330 nor the statute as enacted expressly specifies a consequence for any failure by the FDIC to act within the 60-day period. A well-recognized rule uniformly applied by the courts holds that:

> A statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.[11]

The FDIC Board of Directors has followed this rule.[12]

The FDIC has therefore concluded that section 24(f)(6) does not require the FDIC to act within the 60-day period. Although the FDIC is not required by law to do so, it is the FDIC's intent to respond to notices filed pursuant to § 362.3(d) within 60 days of receipt of the notice.

Maximum Permissible Investment

Section 362.3(d)(4) of the proposal, "Maximum Permissible Investment", sets out the maximum investment in listed stock and/or registered shares that an insured state bank can make under § 362.3(b)(4), i.e., the highest amount of investment permitted by the statute that the FDIC can allow should it approve the bank's notice filed under § 362.3(d)(1). Under § 362.3(d)(4) of the proposal an insured state bank's investments in listed stock pursuant to the exception contained in § 362.3(b)(4) may not exceed the highest level of investment that the bank made during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. Likewise, an insured state bank's investment in registered shares may not exceed the highest level of investment the bank made during that period expressed as a percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. In no event may the aggregate of the bank's investments in listed stock and registered shares exceed 100 percent of the bank's tier one capital.

The bank's investment in listed stock is treated separately from its investment in registered shares thus, the bank is allotted two limits, the aggregate of which cannot exceed 100 percent of the bank's tier one capital. If for example, the bank's highest investment in listed stock over the period represented 45 percent of the bank's tier one capital, the maximum permissible investment in listed stock that the FDIC may allow is 45 percent of tier one capital. If the bank had not made or maintained any investments in registered shares during the period, the FDIC cannot permit future investments in registered shares.

If the FDIC determines that a significant risk will be posed to the deposit insurance fund if the FDIC approves (1) the retention of existing investments in listed stock and/or registered shares, and (2) the continued or future investment in such stock and/or shares to the maximum possible investment, the FDIC may set a lower percentage of the bank's tier one capital as the bank's maximum permissible investment.

Once the FDIC has determined the bank's permissible maximum investment, investments in listed stock and/or registered shares may be made in the future only if the new investment, when added to outstanding investments, does not cause the bank to exceed the permissible maximum percentage of the bank's tier one capital as reported on the bank's call report for the period immediately preceding the investment. In short, the bank is not limited to the highest dollar amount of the investment that it made during the period from September 30, 1990 to November 26, 1991. The permissible maximum percentage is set based upon that amount, however, the percentage, once determined, is used with reference to the bank's tier one capital at the time an investment is made. What is more, if the investment when made is within the maximum permissible investment percentage, the investment will not be considered to be in violation of the bank's tier one capital later declines.

The FDIC recognizes in proposing § 362.3(d)(4) as drafted that there are many possibilities to choose from in deciding when to measure capital for purposes of applying the grandfather provided for by the statute for listed stocks and registered shares. Comment is specifically requested on alternative ways that the regulation might do so and the pro's and con's of those alternatives. Additionally, comment is specifically requested on whether or not the regulation should measure the investment as a percentage of total capital as opposed to tier one capital.

Diverstiture of Excess Stock or Shares

Section 24(f)(4) of the FDI Act provides a transition period during which an insured state bank is required to divest any stock and/or shares that it held as of December 19, 1991 in excess of 100 percent of the bank's capital. Section 362.3(d)(5) of the proposal sets out the diverstiture requirement and, as provided by the statute, indicates that the excess must be diversted by at least ⅓ in each of the three years beginning on December 19, 1991. The proposal indicates that the excess is to be determined by looking to the bank's tier one capital as measured on December

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[8] An earlier version of the provision was simply entitled "Notice of Paragraph (2) Activities". The word "approval" was subsequently added to the title. H.R. Rep. No. 102–330, 102d Cong., 1st Sess., at 55 (Nov. 19, 1991).

[9] The language of paragraph (f)(6) as enacted stands in clear contrast with the language found in H.R. Rep. No. 102–330. The earlier version provided a bank could engage in any investment activity pursuant to paragraph (2) only if notice were filed and "the Corporation *has not determined, within 60 days of receiving such notice*" [emphasis added] that the investment could pose a significant risk to the appropriate insurance fund. Under the earlier version, one might argue that failure of the FDIC to act within 60 days satisfied the second of the two elements of the provision, thus a bank could proceed with its investments as notice had been filed and the FDIC had not determined within 60 days of receipt of the notice that there is a risk to the fund. However, the above language was not enacted.

[10] Paragraph (f)(6) thus stands in contrast to other provisions of the FDI Act and other federal statutes, which (a) clearly provide a set time period in which the FDIC must act on a notice, and (b) provide that failure to act cuts off the FDIC's ability to object to the conduct or activity which is the subject of the notice (absent some other independent authority to do so). (See, for example section 7(j) of the FDI Act (12 U.S.C. 1817(j)), section 32 of the FDI Act (12 U.S.C. 1831i), and 12 U.S.C. 3204(8)).

[11] *Fort Worth National Corp.* v. *Federal Savings and Loan Insurance Corp.*, 469 F.2d 47, 58 (5th Cir. 1972). *See* e.g., *Mayor's Office of Employ* v. *U.S. Dept. of Labor*, 775 F.2d 196, 201 (7th Cir. 1985); *St. Regis Mohawk Tribe, New York* v. *Brock*, 769 F.2d 37, 41 (2d Cir. 1985); *Thomas* v. *Barry*, 729 F.2d 1469, 1470 n. 5 (D.C. Cir. 1984); *Marshall* v. *Local Union No. 1374, Int. Ass'n of Mach.*, 558 F.2d 1354, 1357 (9th Cir. 1977); *Usery* v. *Whitin Mach. Works, Inc.*, 554 F.2d 498, 501 (1st Cir. 1977); and *Maryland Casualty Co.* v. *Cardillo*, 99 F.2d 432, 434 (D.C. Cir. 1938).

[12] FDIC Docket No. 86–43k, par. 5111, A–1205 (January 19, 1988).

19, 1991. (Tier one capital as measured in the bank's December 31, 1991 call report may be used if it is more convenient to do so.)

Insured state banks are required to reduce the excess to a level that is no greater than 100 percent of the bank's tier one capital by December 19, 1994 if the maximum permissible investment set by the FDIC in connection with a notice filed pursuant to § 362.3(d)(1) is 100 percent of tier one capital. Insured state banks that have such an excess are presently subject to the diverstiture requirement and should have already divested ⅓ of the excess or be planning to divest ⅓ of the excess prior to December 19, 1992. The requrement to divest at least ⅓ of the excess each year is waived if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of the bank's current tier one capital. Banks for which the FDIC has set a maximum permissible investment that is lower than 100 percent of tier one capital, must submit a diverstiture plan with the FDIC regional office within 60 days of being so informed. Such excess investment must be divested as quickly as prudently possible but in no event later than December 19, 1996.

5. Notification of Exempt Insurance Activities

Section 362.4 of the proposal directs any insured state bank that was lawfully providing insurance as principal on November 21, 1991, or which has a subsidiary that was lawfully providing insurance as principal on that date, to provide certain information concerning those activities to the FDIC regional director. The information is being requested so that the FDIC will be able to monitor compliance with § 362.3(b)(7) of the proposal. The information may be submitted in letter form.

6. Delegation of Authority

Under the proposal the authority to review and act on divestiture plans as well as the authority to approve or deny notices filed concerning "grandfathered" equity investments is delegated to the Director of the Division of Supervision. The Director may in turn, where confirmed in writing, delegate that authority to any associate director of the Division of Supervision or the appropriate regional director or deputy regional director.

Regulatory Flexibility Analysis

The Board of Directors has concluded after reviewing the proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the devleopment of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institution, Investments.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulatiions by adding a new Part 362 to read as follows:

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

Sec.

Authority: 12 U.S.C. 1816, 1818, 1819(tenth), 1831a.

§ 362.1 Purpose and scope.

The purpose of this part is to implement the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) which sets forth certain restrictions and prohibitions on the activities and investments of insured state banks. In addition, consistent with the overall purpose of section 24, it is the intent of this part to ensure that activities and investments undertaken by insured state banks do not present a risk to either of the deposit insurance funds, are safe and sound, are consistent with the purposes of federal deposit insurance, and are otherwise consistent with law.

§ 362.2 Definitions.

For the purposes of this section, the following definitions shall apply:

(a) *Company* shall mean any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization.

(b) *Control* shall mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(c) An insured state bank wil be considered to convert its charter if the bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991.

(d) *Depository institution* means any bank or savings association.

(e) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. The term shal include, for example, real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with generally accepted accounting principles, and any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes if the insured state bank in substance has virtually the same risks and potential rewards as an investor in the borrower's real estate. The phrase equity interest in real estate does not include the following:

(1) An interest in real property that is used or intended to be used by the insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the insured state bank or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes and is not held longer than the shorter of any time limit on holding such property set by applicable state law or regulation or the time limit on holding such property that is applicable by statute or regulation for a national bank; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development corporations provided that the contribution to any one community development corporation does not exceed 2 percent of the bank's tier one capital and the bank's total contribution to all such corporations does not exceed 5 percent of the bank's tier one capital.

(f) *Equity investment* means any equity security as defined in § 362.2(g); any partnership interest; any equity interest in real estate as defined in § 362.2(e); and any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction.

(g) *Equity security* means any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-tust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(h) *Equity investment permissible for a national bank* shall be understood to refer to an equity investment expressly authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute; regulations issued by the Office of the Comptroller of the Currency; or any order or formal interpretation issued by the Office of the Comptroller of the Currency.

(i) *Insured state bank* shall mean any state bank insured by the Federal Deposit Insurance Corporation (FDIC) whether or not a member of the Federal Reserve System and any insured branch of a foreign bank that is not a federal branch.

(j) *Lower income* means income that is less than or equal to the median income for the area in which the qualified housing project is located as determined by state or federal statistics. The "area" in which a housing project is located shall be understood to refer to the relevant Metropolitan Statistical Area (MSA) in which the project is located if the project is located within an MSA. If the project is not located in an MSA, the median income of the "area" in which the project is located shall be understood to refer to the median income of the state or territory in which the project is located exclusive of the designated MSA's.

(k) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 76f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System (NASDAQ).

(l) *Residents of the state* shall be understood to include companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(m) *Significant risk to the deposit insurance fund* shall be understood to be present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.

(n) *Subsidiary* menas any company directly or indirectly controlled by an insured state bank.

(o) *Tier one capital* shall have the same meaning as set forth in part 325 of this chapter in the case of an insured state nonmember bank and, in the case of an insured state member bank, shall have the same meaning as set forth in regulations defining the term tier one capital as adopted by the bank's appropriate federal banking agency.

(p) *Well-capitalized insured state bank* shall mean an insured state bank which has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and which has not been notified by its appropriate Federal banking agency that it is in a "troubled condition" as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act. For the purposes of this definition, the terms "risk-weighted assets," "total capital," and "total book assets" shall have the respective meaning prescribed in regulations issued by the appropriate Federal banking agency. In order to be considered well-capitalized, an insured state bank must meet the above requirements exclusive of the bank's investment in any department of the bank, and any subsidiary of the bank, that engages in any activity that is not permissible for a national bank. An insured state bank that has been required pursuant to an order, capital directive, or consent agreement to raise its capital to a level higher than the capital levels set out above (exclusive of any investment in a subsidiary or department described above) will not be considered to be "well-capitalized" unless the higher capital levels are met. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

§ 362.3 Equity investments.

(a) *Prohibited investments.* No insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank.

(b) *Exceptions*—(1) *Majority owned subsidiaries.* An insured state bank is not prohibited from acquiring or retaining a majority interest in a subsidiary. If the FDIC denied an application by a Savings Association Insurance Fund (SAIF) member state bank for permission to acquire or retain the majority interest in a subsidiary pursuant to § 333.3 of this chapter, this exception does not apply. If the denial concerned an application for permission to retain the investment, the SAIF member state bank must divest its interest in the subsidiary in accordance with whatever conditions and restrictions are set forth in the FDIC's order denying the application.

(2) *Qualified housing projects.* (i) Subject to the limitation contained in paragraph (b)(2)(ii) of this section, an insured state bank is not prohibited from investing as a limited partner in a partnership the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project. A qualified housing project shall be understood to mean residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment.

(ii) Investments described in paragraph (b)(2)(i) of this section may only be made if the equity investment, when aggregated with any existing equity investment in such a partnership or partnerships, does not exceed 2

percent of the bank's total assets as reported on the bank's most recent consolidated report of condition.

(3) *Savings bank life insurance.* Unless it is otherwise found to pose a significant risk to the insurance fund of which the bank is a member, an insured state bank located in Massachusetts, New York, or Connecticut is not prohibited from owning stock in a savings bank life insurance company provided that the savings bank life insurance company prominently discloses to purchasers of life insurance policies, annuities, and other insurance products that the policies, annuities and other products offered to the public are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. The following or a similar statement will satisfy this requirement: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank."

(4) *Common or preferred stock; shares of investment companies.* (i) To the extent permitted by the FDIC, and subject to the requirements of paragraph (d) of this section, an insured state bank that is located in a state which as of September 30, 1991 authorized investment in:

(A) (*1*) Common or preferred stock listed on a national securities exchange (listed stock); or

(*2*) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, et seq.) (registered shares); and

(B) Which during any time in the period beginning on September 30, 1990 and ending on November 26, 1991 made or maintained an investment in such listed stock or registered shares, may retain whatever listed stock or registered shares that were lawfully acquired or held prior to December 19, 1991, and continue to acquire listed stock or registered shares.

(ii) The exception provided for by paragraph (b)(4)(i) of this section shall cease to apply to any insured state bank if the bank converts its charter, the bank undergoes any transaction for which a notice is required to be filed under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), the bank undergoes any transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842), control of the bank's parent company changes, or the bank is merged into another depository institution. In such event the insured state bank may not make any additional investments pursuant to the exception provided for by paragraph (b)(4)(i) of this section. The bank is not prohibited under this section from retaining its existing investments provided that the FDIC does not order divestiture under paragraph (d)(3) of this section or section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(5) *Stock of company that provides director and official liability insurance.* An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(6) *Shares of depository institutions.* An insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the shares; and the institution's voting shares (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employee) are owned only by depository institutions.

(7) *Interests in insurance subsidiaries.* (i) A well-capitalized insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991 provided that the activities of the subsidiary continue to be limited to providing, as principal, insurance of the same type provided by the subsidiary as of November 21, 1991 to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. In the case of resident companies or partnerships, the subsidiary's activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) An insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a title insurance subsidiary provided that the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and none of the transactions described in paragraph (b)(4)(ii) of this section has occurred since june June 1, 1991.

(c) *Divestiture of prohibited equity investments*—(1) *Requirement to divest.* Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions in paragraph (b) of this section, must be divested as quickly as prudently possible but in no event later than December 19, 1996. If a SAIF member state bank holds an equity investment that was subject to divestiture pursuant to § 333.3 of this chapter, and the equity investment is subject to divestiture under paragraph (c)(1) of this section, the equity investment must be divested as quickly as prudently possible but in no event later than July 4, 1994 or any earlier date established by a divestiture plan that was filed by the bank under, and approved by the FDIC pursuant to, § 333.3 of this chapter.

(2) *Requirement to file divestiture plan.* Any insured state bank that is required by paragraph (c)(1) of this section to divest an equity investment must submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from [insert effective date of final regulation]. An insured state bank that has submitted a plan pursuant to this section may proceed to act in accordance with that plan unless and until it is informed in writing by the FDIC that the plan is unacceptable.

(3) *Content of divestiture plan.* The divestiture plan shall:

(i) Describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent consolidated report of condition prior to the filing;

(ii) Set forth the bank's plan to comply with paragraph (c)(1) of this section;

(iii) Describe the anticipated gain or loss (anticipated or realized) if any from the divestiture of the investment and the impact thereof on the bank's capital (including capital ratios before and after the sale);

(iv) Include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan; and

(v) Such other information as requested by the regional director.

(4) *Retention of equity investments during divestiture period.* Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time

during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments during the divestiture period as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996.

(d) *Notice and approval of intent to invest in common or preferred stock or shares of an investment company; divestiture of excess investments.* (1) Notice and required FDIC determination. No insured state bank may acquire or retain any listed stock or registered shares pursuant to paragraph (b)(4) of this section unless the bank files a 1-time notice with the FDIC setting forth the bank's intention to acquire and retain the listed stock or registered shares and the FDIC has determined that acquiring or retaining the listed stock or registered shares that are the subject of the notice will not pose a significant risk to the deposit insurance fund of which the bank is a member. The notice must be filed with the regional director for the Division of Supervision for the region in which the bank's principal office is located.

(2) *Content of notice.* The notice shall contain:

(i) A description of the obligor, type, amount and book and market values of the listed stock and/or registered shares held as of December 19, 1991;

(ii) The highest dollar amount of the bank's investments in listed stock and/or registered shares between September 30, 1990 and November 26, 1991, both in the aggregate and individually in each of the two categories, expressed as a percentage of tier one capital as reported in the consolidated report of condition for the quarter in which the high dollar amount of investment occurred;

(iii) A description of the bank's funds management policies and how the bank's investments (planned or existing) in listed stock and/or registered shares relate to the objectives set out in the bank's funds management policies;

(iv) A description of the bank's investment policies and a discussion of to what extent those policies:

(A) Limit concentrations in listed stock and/or registered shares both by issue and by industry;

(B) Set an aggregate limit on investment in listed stock and/or registered shares; and

(C) Deal with the sale of listed stock and/or registered shares in light of market conditions;

(v) A discussion of the parameters used to determine the quality of the bank's outstanding and proposed investments in listed stock and/or registered shares as well as future investments;

(vi) A copy of a resolution by the board of directors or board of trustees authorizing the filing of the notice; and

(vii) Such additional information as deemed appropriate by the regional director.

(3) *FDIC determination.* Approval of a notice filed under paragraph (d)(1) of this section will not be granted unless the FDIC determines that acquiring and retaining the listed stock and/or registered shares does not pose a significant risk to the insurance fund of which the bank is a member. Approval may be made subject to whatever conditions or restrictions the FDIC determines is necessary or appropriate. The FDIC may require diverstiture of some or all of the investments in listed stock or registered shares made during the period from September 30, 1990 to December 19, 1991, as well as any investments in listed stock or registered shares made subsequent to that period if it is determined that retention of the investments in question will have an adverse effect on the safety and soundness of the bank.

(4) *Maximum permissible investment.* (i) The maximum permissible investment in listed stock an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed the highest level of investment made by the bank in such stock during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high investment occurred.

(ii) The maximum permissible investment in registered shares an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed the highest level of investment made by the bank in such shares during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high investment occurred.

(iii) The aggregate maximum investment in stock and shares an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed 100 percent of the bank's tier one capital.

(iv) Notwithstanding § 362.3(d)(4) (i), (ii) and (iii), the FDIC, in response to a notice filed under paragraph (d)(1) of this section, may set a percentage as the maximum permissible investment for any insured state bank that is lower than that which would otherwise be applicable.

(v) Any acquisition of listed stock or registered shares by an insured state bank made after December 19, 1991 pursuant to approval of a notice filed under paragraph (d)(1) of this section may not, when made, exceed the maximum permissible investment percentage (as set out in the FDIC's approval of such notice) of the bank's tier one capital as reported on the bank's consolidated report of condition for the period immediately preceding the acquisition.

(5) *Divestiture of excess stock and/or shares.* (i) An insured state bank that held as of December 19, 1991 investments in listed stock and/or registered shares in an aggregate amount in excess of 100 percent of the bank's tier one capital as measured on December 19, 1991 is prohibited from retaining the excess listed stock and/or registered shares. (Tier one capital as reprted on the bank's December 31, 1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991.) Such bank's outstanding investment in listed stock or registered shares must comply by no later than December 19, 1994 with the maximum permissible investment set for the bank by the FDIC in connection with the notice filed pursuant to § 362.3(d)(1) if the bank's maximum permissible investment is 100 percent of tier one capital. In such event, the bank shall divest the excess investment by not less than ⅓ in each of the three years beginning on December 19, 1991, provided however, that the bank shall be relieved of the obligation to divest at least ⅓ of its excess investment each year if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of its current tier one capital. If the bank's maximum permissible investment set by the FDIC is lower than 100 percent of tier one capital, paragraph (d)(5)(ii) of this section shall apply.

(ii) If an insured state bank does not receive approval in connection with a notice filed pursuant to paragraph (d)(1) of this section to retain its outstanding investment in listed stock and/or registered shares, the bank must, as quickly as prudently possible but in no event later than December 19, 1996, divest the listed stock and/or registered shares for which approval to retain was denied. The bank must file a divestiture plan with the regional director for the

Division of Supervision for the region in which the bank's principal office is located no later than 60 days after the bank receives notice that approval to retain the investment(s) was denied. The divestiture plan shall contain the information specified in paragraph (c)(3) of this section.

§ 362.4 Notification of exempt insurance activities.

Any insured state bank that was lawfully providing insurance as principal in a state on November 21, 1991, and any insured state bank that has a subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991, shall submit a notice to the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from [insert effective date of final regulation]. The notice requirement does not apply in the case of an insured state bank described in § 362.3(b)(7)(ii). The notice shall contain the following information:

(a) The name of the bank/or subsidiary;

(b) The state in which the bank is chartered;

(c) If applicable, a recitation of the authority for the bank or subsidiary to conduct insurance underwriting activities;

(d) The state in which the subsidiary is incorporated; and

(e) A description of the insurance policies and other insurance products that the bank and/or subsidiary provided to the public as of November 21, 1991 in the state(s) identified in paragraphs (b) and (d) of this section.

§ 362.5 Delegation of authority.

The authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2) as well as the authority to approve or deny notices filed pursuant to § 362.3(d) is delegated to the Director, Division of Supervision, and where confirmed in writing by the Director, to an associate director, Division of Supervision or the appropriate regional director of deputy regional director.

By Order of the Board of Directors.

Dated at Washington, D.C. this 16th day of June, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-15361 Filed 7-8-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-309-88]

RIN 1545-AL84

Determination of Interest Expense Deduction of Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Rescheduling of public hearing on proposed regulations; extension of time for related submissions.

SUMMARY: This document reschedules the date of the public hearing and extends the time for submitting comments, requests to speak and outlines of oral comments on proposed regulations relating to the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States.

DATES: The public hearing has been rescheduled for Friday, October 30, 1992, beginning at 10 a.m. Written comments, requests to speak, and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [INTL-309-88], room 5228, Washington, DC 20044..

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karl T. Walli of the Office of Associate Chief Counsel (International) at (202) 566-6284. Concerning the hearing, Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not toll-free calls).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing appearing in the **Federal Register** on Friday, April 24, 1992 (57 FR 15038), announced among other things, that written comments with respect to the proposed rules were to have been received by Thursday, July 23, 1992; requests to speak (with outlines of oral comments) at a public hearing scheduled for August 31, 1992, were to have been received by Monday, August 10, 1992. There has been a change in the date of the public hearing and an extension of time to submit written comments, requests to speak and outlines of oral comments. The hearing will be held on Friday, October 30, 1992, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Written comments, requests to speak, and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

In all other aspects, the details regarding the notice of proposed rulemaking and the public hearing will remain the same.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-16023 Filed 7-8-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-92-027]

Drawbridge Operation Regulations; James River, Isle of Wight and Newport News, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is considering adopting new regulations that govern the operation of the James River Bridge across James River, mile 5.0, at Isle of Wight and Newport News, Virginia, by eliminating bridge openings between the hours of 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, year round, except that vessels in an emergency shall pass at any time. The draw shall open on signal at all other times. This action is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before August 10, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street,

Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Discussion of Proposed Rule

The Virginia Department of Transportation has requested that the openings of the drawbridge across the James River, mile 5.0, at Isle of Wight and Newport News, Virginia, be restricted to help reduce rush-hour highway traffic congestion. Currently, the James River Bridge opens for vessel traffic on demand. The Coast Guard is proposing to restrict the passage of vessels during rush hours by eliminating bridge openings between the hours of 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, year round. Vessels in an emergency shall pass at any time. The draw shall open on signal at all other times.

This bridge is heavily traveled throughout the day. A twenty-four hour traffic count indicated that peak vehicular traffic occurred from 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays. Draw openings during this period caused lengthy highway traffic backups, accidents and extensive delays to motorists.

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

Regulatory Evaluation

The proposed regulation is considered to be non major under Executive order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise quality as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard anticipates that these regulations will have no adverse impacts on small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g)

2. Section 117.1012 is added to read as follows:

§ 117.1012 James River

(a) The James River bridge, mile 5.0, between Isle of Wight and Newport News, shall open on signal; except from 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the bridge shall remain closed to navigation.

(b) The bridge shall be opened at anytime for public vessels of the United States and vessels in an emergency which presents danger to life or property.

Dated: June 17, 1992.

W.T. Leland,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–15965 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4151–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Intent to Delete Big River Sand Company Site

AGENCY: The Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Big River Sand Company site from the National Priorities List (NPL), 40 CFR part 300, appendix B, and requests public comment on this action. This action is being taken because EPA and the State of Kansas have determined that no further fund-financed remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare and the environment.

DATES: Comments concerning this site may be submitted on or before August 10, 1992.

ADDRESSES: Comments may be mailed to: Diane Brewer, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Comprehensive information on this site is available for public review at the EPA Region VII Waste Management Division Records Center located at the above address and at the Sedgwick County Public Library, Main Branch, 223 S. Main Street, Wichita, Kansas.

To obtain copies of documents in the public docket contact: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7515.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Big River Sand Company site, Wichita, Kansas, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR as amended, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, and 300.435(e)(3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Big Sand site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(3), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that actions taken at the site are protective of public health, welfare and the environment and that no further fund-financed actions are appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted access, it is EPA's policy to review the site at least every five years to ensure that the remedy remains protective of human health and the environment. A 5-year review is appropriate for the Big River Sand Site and will be conducted in 1993. At that time EPA, in consultation with the State, will determine whether human health and the environment remain protected.

Deletion of a site from the NPL does not preclude eligibility for subsequent fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states: "Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up to Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

According to deletion procedures set forward in § 300.425(e) of the NCP, the agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future fund-financed response actions.

The EPA Region VII will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are often the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region VII has recommended deletion and has prepared the relevant documents.

2. The State of Kansas has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts July 5 and will conclude on August 4, 1992.

4. The Region has made all relevant documents available in the Regional Office and local site information repository (local library).

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion occurs after an EPA Regional Administrator places a final notice of deletion in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VII.

IV. Basis For Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Big River Sand Company site, Wichita, Kansas, from the NPL.

The site is located just northwest of Wichita, Kansas, in Sedgwick County. The site consists of approximately 123 acres, half of which have been extensively mined for sand and gravel. Land use adjacent to the site is a mixture of residential and agricultural uses.

Approximately 2,000 drums of paint-related waste were discovered at the site by the Kansas Department of Health and Environment (KDHE) in 1982. The initial site inspection identified damaged, corroded and leaking drums. Sampling conducted by the State detected metals and volatile organic compounds in the ground water and soil. Concentrations of several metals detected in drinking water wells and monitoring wells exceeded Maximum Contaminant Levels (MCL) established by the Safe Drinking Water Act. From 1982 to 1985 KDHE conducted additional sampling and provided oversight on the site cleanup and removal action performed by the property owner.

The site was proposed for the NPL in October 1984, and in May 1986 was placed on the NPL. The EPA initiated a Remedial Investigation (RI) in 1985 to determine the presence and extent of contamination remaining at the site.

The RI found metals in soil and ground water above background levels, but not outside the range of metal concentrations that may be found naturally occurring in soil and ground water. Selenium was detected at 62 micrograms per liter (ug/1) in one monitoring well. Selenium was not detected in any other monitoring wells or in any drinking water wells.

In a Record of Decision signed on June 28, 1988, the Regional Administrator for Region VII selected the No Further Action alternative for the Big River Sand Company site. The EPA in consultation with KDHE, had determined that the site did not pose a significant threat to public health, welfare and the environment and, therefore, taking additional remedial measures was not appropriate.

Community relations activities conducted at EPA included: Development and implementation of a community relations plan for the RI activities; publication in the local newspaper of a notice informing the public of the Public Comment Period (June 1988) and the availability of the Proposed Plan and the RI Report; and briefings with local government officials on the Proposed Plan and site issues.

The EPA, with concurrence of the State of Kansas, has determined that the Big River Sand Company site poses no significant threat to public health or the environment and, therefore, taking of further remedial measure is not appropriate.

Dated: June 29, 1992.

Morris Kay,

Regional Administrator, USEPA Region VII.

[FR Doc. 92-15968 Filed 7-8-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PART 180

[OPP-300256; FRL-4073-4]

RIN 2070-AC18

Buffalo Gourd Root Powder; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the Microflo Co.

DATES: Comments, identified by the document control number [OPP-300256], must be received on or before August 10, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5180.

SUPPLEMENTARY INFORMATION: The Microflo Co., 719 Second St., Suite 12, Davis, CA 95616, submitted pesticide petition (PP) 2E4064 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of Buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for buffalo gourd root powder will not need to be submitted. The rationale for this decision is described below.

1. The maximum amount of Buffalo gourd root powder allowable is 2.5 lbs/acre/season, and the maximum amount of cucurbitacin (E and I glycosides) allowable is 3.4 grams/acre/season.

2. Based on a worst-case residue analysis, the expected amount of residue of cucurbitacin on corn grain is 1 ppm.

3. Based on this analysis the amount of residue expected is considered to be of no toxicological concern, and no additional toxicological data are required.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must

bear a notation indicating the document control number, [OPP–300256]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient "Buffalo gourd root powder" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Buffalo gourd root powder (*Cucurbita foetidissima* root powder).....	No more than 2.5 lbs/acre/season (3.4 gm/acre/season of Cucurbitacin).	Gustatory stimulant.
* * * * * * *		

* * * * *

[FR Doc. 92–16160 Filed 7–8–92; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 362

RIN 3067–AB84

National Earthquake Hazards Reduction Program; Criteria for Acceptance of Gifts, Bequests, or Services

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: These regulations propose criteria for determining whether the Director of FEMA may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazard Reduction Program (NEHRP).

DATES: Comments from the public are encouraged and will be accepted until September 8, 1992.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mary Summers Taylor, Office of Earthquakes and Natural Hazards, State and Local Programs and Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2804.

SUPPLEMENTARY INFORMATION: Under 31 U.S.C. 1342, officers and employees of the United States Government may not accept voluntary services or employ personal services exceeding that authorized law except for emergencies involving the safety of human life or the protection of property. Unless expressly authorized by law to do so, Federal officers and employees may not accept gifts or bequests of property or money. The general rule is that appropriations may not be augmented with funds or property from private sources unless specifically authorized by law.

Under section 9 the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c, the Director of FEMA may accept and use bequests, gifts, or donations of services, money, or property. Section 9(b) of the Act requires the Director to establish by regulation criteria for accepting such bequests, gifts, or donations, and to take into consideration the impact of such acceptance on the Director's ability to conduct business fairly and objectively, or its impact on the integrity of the National Earthquake Hazards Reduction Program (NEHRP). This authority is similar to that granted by other statutes to other agencies in the NEHRP and the Federal Government.

These regulations establish the required criteria for determining whether to accept bequests, gifts or donations of services, money or property to further the purposes of the NEHRP.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778. List of Subjects in 44 CFR part 362

Earthquakes, Gifts to Government, Government Property. Accordingly, 44 CFR part 362 is added to read as follows:

PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES

Sec.
362.1 Purpose.
362.2 Definitions.
362.3 Criteria for determining acceptance.

Authority: 42 U.S.C. 7701, 7705c.

§ 362.1 Purpose.

This part establishes criteria for determining whether the Director may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazard Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

§ 362.2 Definitions.

As used in this part—

Gifts of services means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

Gifts of property means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

Program Agencies means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

Property means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

Services means labor or professional work performed for the benefit of another or at another's command.

Solicit means to endeavor to obtain by asking or pleading.

§ 362.3 Criteria for determining acceptance.

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Director for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Director or his designee.

(c) The Director may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program Agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the General Counsel, FEMA, for concurrence with all applicable laws and regulations, especially the Ethics Reform Act of 1989, 31 U.S.C. 1353.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

Dated: July 2, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-16103 Filed 7-8-92; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-136; FCC 92-260]

Relaxed Restrictions on the Scope of Permissible Communications in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. This action addresses two petitions and a letter asking for amendment of 47 CFR 97.113. The petitioners indicate this rule needs to be reviewed in light of contemporary communication demands and the operational capabilities of licensees in the amateur service. They also argue that the prohibition against using the amateur service as an alternative to other authorized radio services, except as necessary for emergency communications, may unnecessarily restrict amateur operators from participating in many public service activities and from satisfying their personal communications requirements. The effect of the proposed rule would be to provide greater flexibility for amateur stations to transmit communications for public service projects and personal matters and to eliminate rules that bar amateur stations from transmitting occasionally messages that could indirectly facilitate the business or commercial affairs of some party and messages that could be transmitted in other radio services.

DATES: Comments must be filed on or before October 1, 1992. Reply comments must be filed on or before December 1, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: The Commission's Notice of Proposed Rule Making, adopted June 18, 1992, and released July 2, 1992, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. This action proposes to amend the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. The proposed rules are set forth at the end of this document.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. This is a non-restricted notice and comment rule making proceeding. See § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for provisions governing permissible *ex parte* contacts.

4. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rule changes would not if promulgated, have a significant economic impact on a substantial number of small entities. The Amateur Radio Service may not currently be used to transmit any communication to facilitate the business or commercial

affairs of any party. See 47 CFR 97.113(a).

5. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of section 4(i) and (303)(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(l)(1) and (r).

6. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Radio, Business communications, Prohibited communications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 would continue to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.113 would be revised to read as follows:

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

(1) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(2) Communications in which the station licensee or control operator have a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateurs of the availability for sale or trade, of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

(3) Music; Communications intended to facilitate a criminal act; Messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; Obscene, indecent, or profane words or language; or false or deceptive messages, signals or identification;

(4) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

(b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or newsgathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.

(c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

(e) No station shall retransit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information originating from United States Government stations, and communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for such retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

(f) No amateur station, except in auxiliary, repeater or space operation, may automatically retransmit the radio signals of other amateur stations.

[FR Doc. 92–16157 Filed 7–8–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018 AB61

Live Farm-Raised Fish; Exemption From Fish and Wildlife Export Requirements Except for Marketing Requirements Under Sec. 14.81

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Director has determined that the export of farm-raised fish and farm-raised fish eggs does not adversely affect the wild resources. The U.S. Fish and Wildlife Service (Service) proposes to exempt live farm-raised fish and farm-raised fish eggs from Service export requirements except for marking requirements. This action would exempt exporters of live farm-raised fish and farm-raised fish eggs from import/export license requirements, designated port requirements, and payment of user fees.

DATES: Comments must be submitted on or before August 10, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington Square Building room 500, 4401 North Fairfax Drive, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Deputy Chief, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION: Current regulations (Code of Federal Regulations, title 50, parts 13.21, 14.55, 14.64, and 14.92) exempt shell fish and fisheries products imported or exported for human or animal consumtion from Service import and export requirements. This exemption is based on language in the Endangered Species Act of 1973 (16 U.S.C. 1538). Several sources have raised the question of why live farm-raised fish and farm-raised fish eggs are not included in this exemption. Farm-raised fish and farm-raised fish eggs are defined as meeting the definition of "bred in capitivity" as stated in 50 CFR 17.3.

In reviewing the issue, it has been determined that the exemption of live farm-raised fish and farm-raised fish eggs from the Service export requirements would not significantly increase the risk that illegally taken wild fish would be exported as farm-raised nor would it be detrimental to the Service's fisheries management or law enforcement programs.

Concerns about the possible introduction of injurious species and disease into the country's wild fisheries require that the Service continue to enforce its regulations relating to the *import* of all fish and fish eggs.

Required Determinations

The Department of the Interior (Department) has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant econmic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The only effect of this rule will be to make it easier for businesses to export live farm-raised fish and farm-raised fish eggs.

The proposed rule would relieve businesses from the information collection requirements contained in 50 CFR 14.3 that have been approved by the Office of Management and budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0012. The information is collected to provide information about wildlife imports and exports, including products and parts. The information is used to facilitate enforcement of the Endangered Species Act of 1973 an amended (16 U.S.C. 1531 *et seq.*) and to carry out the provisions of the Convention of International Trade in Endangered Species of Wild Fauna and Flora. Response is required to obtain a benefit.

These proposed changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act Procedures under 51 DM 6, appendix 1, sections 1.4(A)(1) and 1.5.

List of Subjects in 50 CFR Part 14

Annual Welfare, Exports, Fish, Import, Labeling Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the code of Federal Regulations is proposed to be amended as follows:

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 18 U.S.C. 42, 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4223–4244.

2. Section 14.3 is added to read as follows:

§ 14.3 Information collection requirements.

The information collection requirements contained within this part 14 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0012. This information is being collected to provide information about wildlife imports or exports, including products and parts, to facilitate enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C 1531 *et seq.*) and to carry out the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The obligation to respond is required to import or export wildlife.

3. Section 14.23 is added to read as follows:

§ 14.23 Live farm-raised fish and farm-raised fish eggs.

Live farm-raised fish and farm-raised fish eggs meet the definition of "bred in captivity" as stated in 50 CFR 17.3 Except for wildlife requiring a permit pursuant to parts 17 or 23 of this subchapter, live farm-raised fish and farm-raised fish eggs may be exported from any U.S. Customs port.

4. Section 14.64 is amended by adding paragraph (c) to read as follows:

§ 14.64 Exceptions to export declaration requirements.

* * * * *

(c) Except for wildlife requiring a permit pursuant to Parts 17 or 23 of this subchapter, a Declaration for the Importation or Exportation of fish or Wildlife (Form 3–177) does not have to be filed for the exportation of live farm-raised fish and farm-raised fish eggs as defined in 50 CFR 14.23.

§ 14.92 [Amended]

5. Section 14.92(a)(2) is amended by removing the last word "and".

6. Section 14.92(a)(3) is amended by removing the period and adding in its place the word "and" preceded by a semicolon.

7. Section 14.92(a)(4) is added to read as follows:

§ 14.92 Exceptions to license requirement.

(a) * * *

(4) Live farm-raised fish and farm-raised fish eggs of species not requiring a permit under parts 17 or 23 of this subchapter B which are being exported

Dated: April 20, 1992

Bruce Blanchard,

Director.

[FR Doc. 92–16091 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 603

[Docket No. 91–1220–1320]

RIN 0648–AD77

Confidentiality of Statistics

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend the regulations regarding access to confidential statistics obtained under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary of Commerce (Secretary) is required by the Magnuson Act to prescribe regulations that will prevent the disclosure of data submitted in compliance with requirements of a fishery management plan (FMP). In November 1990, Public Law 101–627 amended the Magnuson Act's confidentiality provisions. As a result, this action proposes to amend NMFS policies and procedures regarding: (1) Persons having access to confidential statistics, and (2) circumstances under which such data may or may not be disclosed. The intended effect is to prevent unauthorized disclosure of confidential statistics.

DATES: Written comments on the proposed rule must be received on or before August 10, 1992.

ADDRESSES: Send written comments on the proposed rule to Mark C. Holliday, Fisheries Statistics Division, F/RE1, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark C. Holliday (Chief), Fisheries Statistics Division), 301–713–2328.

SUPPLEMENTARY INFORMATION:

Section 303(d) of the Magnuson Act requires the Secretary to issue regulations governing the preservation

of confidentiality for statistics submitted to the Secretary pursuant to requirements of an FMP (but does not govern statistics obtained by an observer as defined by the Magnuson Act). The following actions, as required by Public Law 101–627, are proposed to implement the 303(d) requirement:

(1) To modify existing language that allows state employees access to confidential statistics pursuant to a written agreement with the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), while ensuring that the date given to the state will not be subsequently related and disclose the identity or business of any person.

(2) To add new procedures to allow a Regional Fishery Management Council (Council) access to confidential data. Council members have previously been denied access to confidential Federal statistics.

(3) To modify existing language by deleting preliminary fishery management plan (PMP) data from the regulation.

Prior to Public Law 101–627, as reflected in existing regulations at 50 CFR part 603, states were allowed to access Magnuson Act data from NMFS when they could demonstrate they had comparable statutory authority to NMFS for collection of the requested fisheries statistics on their own behalf, and had entered into a cooperative data collection agreement with the Assistant Administrator. Before agreeing to a cooperative data collection agreement for access to confidential data, the Assistant Administrator required that states demonstrate they had the authority to prevent further disclosure of the confidential data they were given.

This proposed rule would remove the requirement for having comparable data collection authority, make explicit the requirement that a state have the ability to prevent the further disclosure of the data in a manner consistent with the Magnuson Act, and use the term "written agreement" instead of "cooperative data collection agreement."

The existing regulation's denial of access to confidential fisheries data by Council members precludes individual competitive advantage through membership on a Council since many members are involved in fishing industry businesses. This also reduced the potential for, or the appearance of, conflicts of interest.

The proposed amended regulations include conditions for access to confidential data by a Council that are the same as currently applied to NMFS employees or Council staff: A requirement to demonstrate any confidential data are needed, what purposes they will be used for, and why non-confidential summaries or aggregations could not fulfill the need. Approvals could apply to one-time requests as well as continuing access to certain classes of data. Access to confidential data is not granted to Plan Development Teams or Scientific or Statistical Committees, since NMFS has no statutory authority to grant access to these groups.

The proposed rule would remove the statutorily confidential protection from data submitted as a requirement of a PMP. The Magnuson Act does not identify PMP data as statutorily confidential under section 303(d). Data submitted as a requirement of a PMP may still remain confidential under an administrative pledge of confidentiality.

Classification

The Assistant Administrator has determined that this rule is not a "major rule" under Executive Order 12291 and does not require preparation of a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public. For the same reasons, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act because it does not create any additional burden. As a result, a regulatory flexibility analysis was not prepared.

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Lists of Subjects in 50 CFR Part 603

Confidential business information, Fisheries, Statistics.

Dated: July 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 603 is proposed to be amended as follows:

PART 603—CONFIDENTIALITY OF STATISTICS

1. The authority citation for part 603 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1853(d).

2. Section 603.1 is revised to read as follows:

§ 603.1 Purpose.

The purpose of this part is to prescribe procedures to protect the confidentiality of statistics required to be submitted to the Secretary by any person in compliance with an FMP.

3. In § 603.2, the definition of "PMP" is removed, the definitions of "Assistant Administrator" and "confidential statistics" are revised, and a new definition for "state employee" is added, in alphabetical order, to read as follows:

§ 603.2 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data under § 603.5(b).

Confidential statistics are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

* * * * *

State employee means any member of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

§ 603.3 [Amended]

4. In § 603.3., the words "PMP or" are removed.

5. § 603.5 is revised to read as follows:

§ 603.5 Access to statistics.

(a) *General.* In determining whether to grant a request for access to confidential data the following information will be taken into consideration:

(1) The specific types of data required;

(2) The relevance of the data to conservation and management issues;

(3) The duration of time access will be required:

Continuous, infrequent, or one-time; and

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management; and

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act's, and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Regional Fishery Management Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring;

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in § 603.5(a), the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data; and

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Directive 88–30.

§ 603.6 [Amended]

6. In § 603.6, the introductory text to paragraph (a), the words "a PMP or FMP" are removed and the words "an FMP" are added in their place.

§ 603.7 [Amended]

7. In § 603.7, the words, "a PMP or FMP" are removed and the words "an FMP" are added in their place, wherever they occur.

[FR Doc. 92–16152 Filed 7–8–92; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1992

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination of the quantities of corn, frozen bulk butter, and nonfat dry milk to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended (section 416(b)), during fiscal year 1992.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 720–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that a total of 760,000 metric tons of corn, 255,000 metric tons of sorghum, 80,000 metric tons of butter/butteroil, and 75,000 metric tons of nonfat dry milk shall be made available for donation under section 416(b) during fiscal year 1992. This determination was published in the Federal Register on November 6, 1991. The purpose of this notice is to inform the public that such previous determination is revised by adding 500,000 metric tons of corn and 45,000 metric tons of frozen bulk butter and reducing nonfat dry milk by 40,000 metric tons.

Determination

Accordingly, a total of 1,515,000 metric tons of grains and 160,000 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1992.

The total kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Grain	Corn	1,260,000
	Sorghum	255,000
	Total	1,515,000
Dairy Product	Nonfat Dry Milk	35,000
	Butter/Butteroil*	125,000
	Total	160,000

* At least 45,000 metric tons must be frozen bulk butter.

Done at Washington, DC, this 30th day of June 1992.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92–15938 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–10–M

Forms Under Review by Office of Management and Budget

July 3, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• *Farmers Home Administration*

Form FmHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Property.
Form FmHA 1962–1.
On occasion.
Individuals or households; Farms; 157,310 responses; 51,912 hours Jack Holston (202) 729–9736.

• *Agricultural Marketing Service*

Domestic Dates Produced or Packed in Riverside County, California
Marketing Order 987
FV–191 and FV–192
Recordkeeping; On occasion; Monthly; Annually; Biennially.
Farms; Small businesses or organizations; 455 responses; 202 hours.
Mark Hessel (202) 720–9920.

• *National Agricultural Statistics Service*

Water Quality/Pesticide Data Program.
On occasion.
Farms; 20,250 responses; 17,323 hours.
Larry Gambrell (202) 720–7737.

Extension

• *Agricultural Marketing Service*

Meat Market News.
Daily.
Businesses or other for-profit; 182,000 responses; 3,033 hours.
John E. Van Dyke (202) 720–6231.

• *Forest Service*

Pilot Qualification and Approval Record, Aircraft Data Card and Approval Record.
FS 5700–20, FS 5700–20a, FS 5700–21, FS 5700–21a.
Annually.
Individuals or households; Businesses or other for-profit; 1,915 responses; 1,454 hours.
John Eckert (202 205–1497.

• *Office of Personnel*

Advisory Committee Membership Background Information.
AD–755.
Annually.
Individuals or households; 700 responses; 350 hours.
Carolyn T. Wright (202) 720–8325.

• *Animal and Plant Health Inspection Service*

Witchweed Mail Survey.
Annually.
Farms; 2,800 responses; 1,400 hours.
Andrea M. Elston (301) 436–4478.

New Collection

• *Animal and Plant Health Inspection Service*

APHIS Exit Survey
Annually.
Individuals or households; Federal agencies or employees; 60 responses; 15 hours.
Richard F. Fraser (301) 436–4949.

Reinstatement

• *Rural Electrification Administration*

Personal Experience Record of Applicant for Position as Manager.
Form 328.
Annually.
Businesses or other for-profit; 100 responses; 125 hours.
Paul D. Mardsen.

• *Animal and Plant Health Inspection Service*

Exotic Bee Diseases and Parasites (7 CFR 319.76) Honeybees and Honeybee Semen (7 CFR 322).
On occasion.
Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 270 responses; 360 hours.
Phillip Lima (301) 436–8677.

• *Farmers Home Administration*

7 CFR 1944–D, Farm Labor Housing Loan and Grant Policies; Procedures, and Authorization.
On occasion.
State or local governments; Farms; Non-profit institutions; 4,740 responses; 8,762 hours.
Jack Holston (202) 720–9736.

Larry K. Roberson,
Departmental Clearance Officer.

[FR Doc. 92–16151 Filed 7–8–92; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 92–109–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products..

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. And 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92–169–01	DeKalb Plant Genetics	06–17–92	Corn plants genetically engineered to express the *bar* gene for tolerance to the herbicide bialaphos, genes for resistance to European corn borer, and genes which enhance the insect resistance.	Maui County, Hawaii
92–169–02	Northrup King Company	06–17–92	Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD–1 for resistance to European corn borer or the coat protein genes of maize dwarf mosaic virus strain B (MDMV–B) for resistance to MDMV–B.	Kauai Cty, Hawaii
92–174–01, renewal of permit 91–346–02, issued on 02–07–92.	Pioneer Hi-Bred International, Incorporated.	06–22–92	Soybean plants genetically engineered to express methionine-and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico

Application No.	Applicant	Date received	Organisms	Field test location
92-174-02	Pioneer Hi-Bred International, Incorporated.	06-22-92	Corn plants genetically engineered to express the coat protein genes of maize dwarf mosaic virus strain A (MDMV-A), maize chlorotic mottle virus (MCMV), or maize chlorotic dwarf virus (MCDV) for resistance to these viruses.	Kauai County, Hawaii
92-175-01, renewal of permit 91-218-02, issued on 10-04-91.	Upjohn Company	06-23-92	Corn plants genetically engineered to express a glufosinate phosphino thricin acetyl transferase (PAT) gene.	Isabela, Puerto Rico

Done in Washington, DC, this 2nd day of July 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-16150 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Economic Research Service

National Agricultural Cost of Production Standards Review Board: Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the U.S. Department of Agriculture, Washington, DC on July 27-28, 1992.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. The meeting will open at 8 a.m. on July 27 in room 108-A, USDA Administration Building, 14th and Independence Ave, SW. Subsequent sessions will be held in Waugh Auditorium, 1301 New York Avenue, NW. Meeting times are 1:30-5 p.m. on July 27 and 8 a.m.-12 p.m. on July 28.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Kenneth Deavers, Director, ARED-ERS-USDA, room 314, 1301 New York Avenue, NW., Washington, DC 20005.

This meeting is authorized by 7 USC 4104, as amended. For further information, contact Jim Ryan at (202) 219-0798.

K.H. Reichelderfer,

Acting Administrator.

[FR Doc. 92-16089 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-18-M

Forest Service

Ridge Area Timber Sales, Including Ridge and Milk Timber Sales, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (56 FR 49451) on June 6, 1991, for the analysis of two timber sales on the Okanogan National Forest, Twisp Ranger District. The current title does not reflect the correct name of the project. The revised title of the EIS will be "Environmental Impact Statement for the Ridge and M&M Timber Sales".

The NOI stated that the proposed action was to harvest 10 million board feet of timber and construct 15 miles of road with the Ridge Timber Sale, selling in 1992; and harvest 4 million board feet of timber and construct 6 miles of road with the Milk Timber Sale, selling in 1993. This revised NOI changes the proposed action to harvest 11.5 million board feet of timber and construct 47.7 miles of road with the Ridge Timber Sale, selling in 1993; and harvest 2.3 million board feet of timber and construct 6.2 miles of road with the M&M Timber Sale, selling in 1994.

The NOI stated that the draft EIS was expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October 1991. The revised date of filing the draft EIS is July 1992 and the final EIS is January 1993.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Jennifer Klepach, EIS team leader, Okanogan National Forest, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856, telephone (509) 997-2131.

Dated: June 30, 1992.

Donald C. Lyon,

Acting Forest Supervisor.

[FR Doc. 92-16107 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 583]

Resolution and Order Approving the Application of the Canaveral Port Authority for Special-Purpose Subzone Status at the American Digital Switching, Inc., Plant (Telecommunications and Computer Products) Melbourne, FL.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Canaveral Port Authority, grantee of FTZ 136, filed with the Foreign-Trade Zones Board (the Board) on June 11, 1991, requesting special-purpose subzone status at the telecommunications and computer products plant of American Digital Switching, Inc., in Melbourne, Florida, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28. The Secretary of Commerce as Chairman and

Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

American Digital Switching, Inc., Melbourne, FL

Whereas, By an Act of Congress approved June 18, 1934, an Act to provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Board' regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, The Canaveral Port Authority, grantee of FTZ 136, has made application (filed 6–11–91, FTZ Docket 34–91, 56 FR 28862, 6–25–91) to the Board for authority to establish a subzone at the telecommunications and computer products plant of American Digital Switching, Inc., in Melbourne, Brevard County, Florida;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, The Board hereby authorizes the establishment of a subzone at the American Digital Switching, Inc., plant in Melbourne, Florida, designated on the records of the Board as Foreign-Trade Subzone 136B, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 29th day of June 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–16006 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 21–92]

Foreign-Trade Zone 177—Evansville, Indiana; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 177, requesting authority to expand its zone in Evansville, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 29, 1992.

FTZ 177 was approved on March 12, 1991 (Board Order 513, 56 FR 12155, 3/22/91). The zone currently involves three sites in the Evansville-Mount Vernon area: *Site 1* (40 acres) within the Southwind Maritime Centre, Posey County, Indiana; *Site 2* (30,000 sq. ft.) Central Warehouse Inc., 301 East Indiana Street, Evansville; and *Site 3* (40,000 sq. ft.) Morton Avenue Warehouse, Inc., East Lynch Road, Evansville.

The applicant is now requesting authority to expand the zone to add a fourth site (78 acres) at the Evansville Regional Airport, Evansville. The site consists of 2 parcels: a warehouse facility (75,000 sq. ft.) within the airport terminal building, and an industrial park (76 acres) on Oakhill Road in the northeast corner of the Airport complex. The facilities are owned and operated by the Evansville-Vanderburgh Airport Authority.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 8, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 22, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, Federal Building, room 238, 101 NW. Seventh, Evansville, Indiana 47708.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 1, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–16000 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 587]

Resolution and Order Approving the Application of the New Hampshire State Port Authority for Special-Purpose Subzone Status; ABB Combustion Engineering, Inc. (Industrial/Nuclear Equipment) Newington, NH

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the New Hampshire State Port Authority, grantee of Foreign-Trade Zone 81, filed with the Foreign-Trade Zones Board (the Board) on September 18, 1991, requesting special-purpose subzone status at the industrial/nuclear equipment manufacturing plant of ABB Combustion Engineering, Inc. (subsidiary of ABB Asea Brown Boveri Group, Switzerland), in Newington, New Hampshire, within the Portsmouth Customs Port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

ABB Combustion Engineering, Inc. Newington, NH

Whereas, By an Act of Congress approved June 18, 1934, an Act to provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of

establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, The New Hampshire State Port Authority, Grantee of Foreign-Trade Zone No. 81, has made application (filed 9–18–91, FTZ Docket 54–91, 56 FR 49742, 10–1–91) to the Board for authority to establish a special-purpose subzone at the ABB Combustion Engineering, Inc., plant in Newington, New Hampshire;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, The Board hereby authorizes the establishment of a subzone at the ABB Combustion Engineering, Inc., plant in Newington, New Hampshire, designated on the records of the Board as Foreign-Trade Subzone 81C, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed at Washington, DC, this 29th day of June 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–16007 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than July 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping duty proceedings	Period
Armenia: Solid urea (A–831–801)	07/01/91–06/30/92
Azerbaijan: Solid urea (A–832–801)	07/01/91–06/30/92
Belarus-Baltic: Solid urea (A–822–801)	07/01/91–06/30/92
Brazil: Industrial nitrocellulose (A–351–804)	07/01/91–06/30/92
Brazil: Silicon metal (A–351–806)	03/29/91–06/30/92
Estonia-Baltic: Solid urea (A–447–801)	07/01/91–06/30/92
Georgia: Solid urea (A–833–801)	07/01/91–06/30/92
German Democratic Republic: Solid urea (A–429–601)	07/01/91–06/30/92
Iran: Certain in-shall pistachios (A–507–502)	07/01/91–06/30/92
Japan: Industrial nitrocellulose (A–588–812)	07/01/91–06/30/92
Japan: Malleable cast-iron pipe fittings (A–588–605)	07/01/91–06/30/92
Japan: High power microwave amplifiers and components thereof (A–588–005)	07/01/91–06/30/92
Japan: Fabric expanded neoprene laminate (A–588–404)	07/01/91–06/30/92
Japan: Synthetic methionine (A–588–041)	07/01/91–06/30/92
Kazakhstan: Solid urea (A–834–801)	07/01/91–06/30/92
Kyrgyzstan: Solid urea (A–835–801)	07/01/91–06/30/92
Latvia-Baltic: Solid urea (A–449–801)	07/01/91–06/30/92
Lithuania: Solid urea (A–451–801)	07/01/91–06/30/92
Moldova: Solid urea (A–841–801)	07/01/91–06/30/92
Romania: Solid urea (A–485–601)	07/01/91–06/30/92
Russia: Solid urea (A–821–801')	07/01/91–06/30/92
Tajikistan: Solid urea (A–842–801)	07/01/91–06/30/92
The Federal Republic of Germany: Industrial nitrocellulose (A–428–803)	07/01/91–06/30/92
The People's Republic of China: Industrial nitrocellulose (A–570–802)	07/01/91–06/30/92
The Republic of Korea: Industrial nitrocellulose (A–580–805)	07/01/91–06/30/92
The United Kingdom: Industrial nitrocellulose (A–412–803)	07/01/91–06/30/92
Turkmenistan: Solid urea (A–843–801)	07/01/91–06/30/92
Ukraine: Solid urea (A–823–801)	07/01/91–06/30/92
Uzbekistan: Solid urea (A–844–801)	07/01/91–06/30/92
European Economic Community: Sugar (C–408–046)	01/01/91–12/31/91
Uruguay: Leather wearing apparel (C–355–001)	01/01/91–12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by July 31, 1992.

If the Department does not receive, by July 31, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 26, 1992.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-16005 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-10-M

[A-570-003]

Cotton Shop Towels From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 31, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC) (57 FR 10881). We have now completed the review and determine the dumping margins to be 72.14 percent for Tianjin Arts & Crafts Import and Export Corporation (TAC), and 122.81 percent for both Chinatex and China National Arts and Crafts Import and Export Corporation (CNART), based on best information available, during the period October 1, 1989 through September 30, 1990.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 10881) the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the PRC (48 FR 45277, October 4, 1983) covering the period October 1, 1989 through September 30, 1990. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On June 14, 1991, questionnaires were issued to the three producers/resellers listed above. TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch, was the only company that answered the Department's questionnaire.

In the previous review of cotton shop towels from the PRC (56 FR 60969), we determined that TAC had sufficiently demonstrated the absence of governmental control over its legal, financial and economic affairs. TAC, therefore, qualified for a separate dumping rate. See Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC (56 FR 60969, November 29, 1991). TAC has again placed evidence on the record demonstrating its independence from governmental control during the present review. The Department has determined that once a company in a non-market economy country has demonstrated that it is entitled to a separate rate, unless there is an indication that its status may have changed, it is not necessary for that company to resubmit data supporting a separate rate during subsequent reviews. See Final Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings from the PRC (57 FR 24245, June 8, 1992). Accordingly, we are granting TAC's request for a separate dumping rate during this review period.

Use of Best Information Available

We have assigned to all other PRC firms for which a review was requested a deposit rate based on the best information available (BIA), in accordance with section 776(c) of the Act, because no other named PRC exporter responded to our questionnaire. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what to use as BIA. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will assign to that company the highest margin calculated for any company in this review, any previous review or the original investigation. See, *e.g.*, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review (56 FR 31692, 31704, July 11, 1991). In this case, the highest margin is from a previous review.

Scope of the Review

The products covered by this review are cotton shop towels from the PRC. This merchandise is classifiable under item number 6307.10.2005 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers three producers/resellers of cotton shop towels to the United States and the period October 1, 1989 through September 30, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from one respondent, TAC, and written rebuttal comments from the petitioner, Milliken & Company. Because petitioner's comments were solely in support of the Department's preliminary results and in opposition to respondent's comments, we have only discussed respondent's comments.

Comment 1: Respondent argues that the Department improperly initiated this review on the grounds that petitioner's request for initiation failed to meet what TAC characterizes as jurisdictional requirements under 19 CFR 353.22(a) (1990). Specifically, the request failed to state "why the person (requesting the review) desires the Secretary to review those particular producers and resellers" named in the request. Therefore, for this reason, and because each administrative record must stand alone, TAC claims the Department should rescind the notice of initiation of this review, a power that is within the Department's inherent authority.

Department's Position: We disagree with respondent's argument that petitioner's request for review was inadequate. This argument was previously presented by the respondent soon after initiation of this review. Based on the Department's stated interpretation of its regulatory provision, we rejected TAC's claim then as well. The provision for stating "why" a requesting party desires an administrative review of particular producers and resellers "is not intended to be a difficult hurdle to overcome." Antidumping and Countervailing Duties: Administrative Reviews on Request; Transition Provisions (50 FR 32556, 32557 (1985)) (*Transition Provisions*). Neither the statute nor the legislative history underlying the 1984 amendment to section 751 of the Act refers to this requirement. See, *e.g.*, H.R. Conf. Rep. No. 98, 98th Cong., 2d Sess. 181 (1984). Clearly, Congress left the manner in which to regulate requests for review within the Department's discretion, and we have explained what information we require in order to initiate a review, and why. See *Asociacion Colombiana de*

Exportadores de Flores versus *United States*, 903 F.2d 1555, 1559 (Fed. Cir. 1990). As the Department explained when it promulgated § 353.22(a)(1) (originally § 353.53a(a)(1)), "requests and the statements should help the Department focus on the potential respondents which the requester believes to be most important to the requester." *Transition Provisions*, 50 FR at 32557.

The Court of Appeals for the Federal Circuit has affirmed this view, holding that "(t)he Administration imposed the requirements for its benefit, not for the benefit of the subjects of the investigation." *Asociacion Colombiana*, 903 F.2d at 1559. Furthermore, the Court stated that the question of whether a requesting party satisfies the obligations of the Department's regulations is a decision for the Department and not interested parties to make. *Id.*

We agree with respondent that data from each review period is analyzed separately. Whenever the Department seeks to establish whether a party has demonstrated a consistent pattern of behavior, however, we may turn to the record in previous reviews as precedent. This is the situation here. The Department had no difficulty focusing on the respondents considered most important by the petitioner, in part because petitioner listed the same three producers/resellers in all previous requests for review. Petitioner listed CNART and Chinatex in every request for review since the original investigation. TAC, which only separated from CNART, its parent company three review periods ago, has been listed by petitioner each year thereafter. Petitioner obviously considered these producers "important" in terms of dumping practices.

The Department has consistently determined that TAC and its predecessor CNART engaged in dumping during the original investigation and the past four consecutive administrative review periods. Petitioner has consistently requested that the Department review TAC's shipments of shop towels in order to determine the proper antidumping duty rate for each period. Consequently, in accordance with the Department's consistent interpretation of this regulatory provision, we determine that petitioner's intentions were clear from the face of its initiation request for this review period. While the facts in this case clearly show that the initiation requirements were met, there may be other instances where the facts indicate that additional information may be needed to meet the initiation requirements. See *Asociacion Colombiana*, 903 F.2d at 1555.

Comment 2: Respondent argues that the Department should use TAC's input prices for starch and ink in calculating foreign market value (FMV). First, TAC contends that the Department abandoned its methodology of "mixing" surrogate price information with nonmarket economy (NME) prices, a decision which is not grounded in any articulated reasoning or substantial evidence in the record. TAC further notes that the Department did not issue supplemental questionnaires following TAC's response regarding the market-driven status of its inputs, suggesting that the Department was satisfied with TAC's response. Citing *Final Determination of Sales at Less Than Fair Value (LTFV): Chrome Plated Lug Nuts from the PRC*, 56 FR 46153 (1991) (*Lug Nuts*), and *Final Determination of Sales at LTFV; Oscillating Fans and Ceiling Fans from the PRC*, 56 FR 55271 (1991) (*Fans*), TAC states that the Department determined that using individual input prices, sourced within an NME and found to be market-driven, was consistent with the Congressional intent underlying section 773(c)(1)(B) of the Act. These decisions, TAC claims, were also intended to enhance predictability. Thus, without a change in the statute or the regulations, this abrupt policy shift defies the Department's goals of predictability and accuracy as they were articulated in *Lug Nuts*. Such an abuse of discretion, TAC contends, is contrary to law and should be reversed.

Department's Position: We disagree with respondent. To the extent it was required, TAC received adequate notice of the Department's reconsideration of its policy. As noted by petitioners, the Department first gave public notice of this reevaluation on November 13, 1991 when it initiated the CVD investigation of fans from the PRC. See *Initiation of Countervailing Duty Investigation: Oscillating Fans and Ceiling Fans from the PRC*, 56 FR 57616 (1991); see also *Initiation of Countervailing Duty Investigation: Chrome plated Lug Nuts and Wheel Locks from the PRC*, 57 FR 877 (January 9, 1992). In addition, several months before publishing the preliminary results in this case, the Department sought and was later granted a remand by the Court of International Trade (CIT) of its LTFV determination in *Lug Nuts*. See *Consolidated International Automotive, Inc.*, versus *United States*, Slip Op. 92–54 (CIT April 8, 1992). Finally, TAC submitted comments following publication of the preliminary results in this review *Cotton Shop Towels from the PRC: Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 10881 (March 31, 1992) (*Preliminary Results*). The Department has fully considered TAC's comments and has maintained its original position. Therefore, the argument that respondent had no notice of the Department's reconsideration of its policy is without merit.

Similarly, the Department acted within its statutory authority by refining its test for evaluating the market conditions within an NME. Contrary to TAC's assertion, the Department has never determined that Congress intended prices of inputs produced within an NME to be used in calculating FMV. See *Lug Nuts*. In *Lug Nuts*, the Department merely interpreted the statute as permitting such a finding. Upon reconsideration, however, we have determined that the approach outlined in *Lug Nuts* offers an inappropriate basis for determining FMV in cases involving NME countries.

We addressed this issue recently in *Amendment to Final Determination of Sales at LTFV and Amendment to Antidumping Duty Order: Lug Nuts from the PRC*, 57 FR 15052 (April 24, 1992) (*Lug Nuts Remand*). There, we noted that section 773(c)(1) of the Act requires that foreign market value be calculated on the basis of "factors of production" generally valued in an appropriate surrogate country if:

> (A) The merchandise under investigation is exported from a nonmarket economy country, and
>
> (B) The administering authority finds that the available information does not permit the foreign market value of the merchandise to be determined under subsection (a) (the "normal" methodology for determining foreign market value) of this section.

19 U.S.C. 1677b(c)(1) (emphasis added). In amending the statute in 1988 to add section 773(c)(1)(B), Congress clearly contemplated a situation in which a sector of an NME may be sufficiently free of NME distortion in order that the actual prices and/or costs incurred in the NME could be used in dumping calculations and render meaningful results. Both paragraphs (A) and (B) must be satisfied before the Department will use the factors of production methodology. If the facts permit, section 773(c)(1)(B) allows the Department to calculate foreign market value using normal foreign market value methodologies despite the fact that the economy of the subject country, on a macro basis, is nonmarket in nature. See *Lug Nuts Remand; Final Negative Countervailing Duty Determinations: Oscillating the Ceiling Fans from the*

PRC, 57 FR 24018 (June 5, 1992) (*Fans CVD Determination*). Because the statute provides no guidance to help identify such situations, however, we have attempted to develop the appropriate standards to fairly and consistently make this determination.

When we issued the original determinations in *Lug Nuts* and *Fans*, the Department had only recently begun receiving and considering claims of market conditions existing within NMEs, and was not in a position to announce a definitive rule at that time. We subsequently decided that the scope of the test set forth in the *Lug Nuts* and *Fans* decisions did not take adequate consideration of the indirect nonmarket forces at work within an NME and was, therefore, too narrow. As noted above, the Department's reconsideration of this issue was known publicly as early as two months after the issue was first considered in *Lug Nuts*. Subsequently, the CIT granted the Department's request for a remand of its initial *Lug Nuts* determination, thereby implicitly recognizing the Department's authority to reconsider its standard. *See Consolidated Int'l Automotive, supra*, Slip. Op. 92–54.

Contrary to TAC's assertion, moreover, the Department was not required to promulgate a regulation or wait for a change in the statute before reconsidering this standard. As the Supreme Court has recognized, an agency engaged in the administration of a statute has a choice between proceeding by rule-making or through decision-making, on a case-by-case basis. *Securities and Exchanges Commission* v. *Chenery Corp.*, 332 U.S. 202, 203 (1947); *see also Zenith Elec. Corp.* v. *United States*, 755 F.Supp. 397 (CIT 1990): This decision lies primarily within the informed discretion of the administering agency. The Supreme Court further recognized that an "agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule." *Chenery*, 332 U.S. at 202.

Accordingly, TAC is incorrect in arguing that the Department jeopardized predictability by revising its test. To the contrary, unlike the situation following *Lug Nuts*, we have now developed a test for determining when market conditions are functioning within an NME, based on stated criteria.

One source of guidance to which the Department turned in developing this test is the Federal Circuit's decision in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown*). Based on the analysis in *Georgetown*, we have concluded that whenever the imports under investigation are being produced and sold in a nonmarket setting, use of the factors of production methodology under the antidumping law is the appropriate standard. As noted in *Lug Nuts Remand*, 57 FR at 15055, however,

> where those characteristics identified by the Federal Circuit are not present, and we have sufficient confidence in the validity of all relevant costs and prices to permit their use in the dumping calculation, we have concluded that market economy remedies are available, *i.e.*, that the market economy provisions of the antidumping law and the countervailing duty law can be applied.

Our new test, now known as the market oriented industry (MOI) test, determines when we will implement the scenario envisioned in *Lug Nuts Remand* and was first articulated in *Preliminary Determination of Sales at LTFV: Sulfanilic Acid From the People's Republic of China* 57 FR 9409 (March 18, 1992) (*Sulfanilic Acid*) and followed in the *Preliminary Results* and subsequent determinations. *See Lug Nuts Remand; Fans CVD Determination*; and *Final Determination of Sales at LTFV: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China*, 57 FR 21058 (May 18, 1992). The MOI test is clearly not met by the present situation. TAC has only claimed that the domestic prices paid for two insignificant inputs—starch and ink—are market-oriented. As the Department explained in the *Preliminary Results*, TAC has not alleged that PRC shop towel producers are sufficiently market-oriented to justify market economy treatment as permitted under section 773(c)(1)(B) and as interpreted by the MOI test.

Comment 3: TAC asserts that the Department unjustifiably delayed the *Preliminary Results* until March 31, 1992, a date beyond the permissible time frame during which the Department would have accepted actual market-driven input costs within an NME. TAC submitted its questionnaire response on October 11, 1991, and the Department tentatively intended to publish its preliminary results on January 31, 1992. Because the policy apparently changed with publication of *Sulfanilic Acid*, the Department caused TAC to miss its rightful opportunity.

Department's Position: We disagree with the respondent. The fact that the Department did not issue its preliminary results in this case on January 31, as tentatively scheduled, is not prejudicial to respondent. In the first place, provided an agency explains a decision to revise its policy, the courts have emphasized that agencies cannot be held to an overly rigid interpretation of the law they administer. *See, e.g., Chenery, supra; Rust* v. *Sullivan*, 111 S.Ct. 1759 (1991). Although in situations such as the present, the Department attempts to issue results of administrative reviews in as timely a manner as possible, such reviews are not subject to specific, mandatory time limits. *See* 19 U.S.C. 1675.

Comment 4: Respondent argues that the Department abused its discretionary authority when calculating FMV using input prices from surrogate market economy countries to value PRC inputs. According to respondent, the Department unjustly pieced together surrogate information from the three different surrogate economies of India, Indonesia and Pakistan. Furthermore, the Department failed to place information on the record supporting its choice of surrogates or its preference for India over Pakistan or Indonesia.

Respondent cites to publicly available data to support its contention that the Department inappropriately mixed surrogate information. These data, according to respondent, indicate that, unlike India and Pakistan, Indonesia's GNP per capita is not comparable to that of the PRC. Also, in terms of quantity of subject merchandise exported to the United States, India and Pakistan are almost indistinguishable from one another.

Respondent also complains that the Department chose India as its primary surrogate country despite the fact that Indian data were only available for three of the eleven factor inputs. Of those three, only two were contemporaneous with the period of review. Therefore, the respondent claims that the Department ignored the more complete, reliable surrogate data available from Pakistan. The respondent further claims that the Department erred by choosing the highest prices available from Pakistan and Indonesia for the remaining eight factor inputs.

Respondent requests that the Department remedy this abuse of discretion by selecting Pakistan as its primary surrogate economy. The respondent claims that Pakistan offers a more complete set of surrogate data, which is supported by verified information from the Department's investigation of shop towels from Bangladesh. See *Final Determination of Sales at LTFV: Shop Towels From Bangladesh* (57 FR 3996, February 3, 1992).

Department's Position: We disagree. In determining FMV in cases involving NME countries, the present statutory provision requires that, to the extent possible, surrogate countries be at a level of economic development

comparable to that of the NME country and be significant producers of comparable merchandise. 19 U.S.C. 1677b(c)(4); See also 19 CFR 353.52(b). In this administrative review, we determined that India, Indonesia and Pakistan are comparable to the PRC in terms of overall economic development and that each of these countries is a significant producer of cotton shop towels or other comparable merchandise. In this and past administrative reviews, the Department has determined that India is the most comparable surrogate on the basis of per capita GNP, the distribution of labor between the agricultural and nonagricultural sectors, and the growth rate in per capita GNP. (*Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC*, 56 FR 4040, February 1, 1991) and (*Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC*, 56 FR 60969, November 29, 1991). The Department is not required to put information on the record during every review period to permit parties to comment on our surrogate country selections. The statute and regulations clearly provide that this decision is to be made by the Department (*See, e.g.*, 19 CFR 353.52(c) ("The Secretary will value the factors of production in a non-state-controlled-economy country which the Secretary considers comparable in economic development to the home market country.")), provided the subject merchandise is produced in significant quantities in a country which the Department considers comparable, the Court of International Trade has sanctioned the Department's exercise of discretion in this area. (*See China National Arts & Crafts Import & Export Corp.* v. *United States*, Slip Op. 91–70 (CIT 1991)).

In our preliminary analysis, we stated that we would assign values based on data from Indonesia or Pakistan, the next most comparable surrogate countries, to factors for which we were unable to obtain Indian values. The Department is under no statutory obligation to use a single source of surrogate data, nor to refrain from using India as its primary surrogate country simply because the Department also used data from other surrogate countries in valuing TAC's factors of production.

Comment 5: Respondent argues that surrogate data from Indonesia is recycled data from a wholly unreliable source and should be rejected by the Department. First, the respondent claims, as it has in the last two administrative reviews, that data from an Indonesian company, Tonikitex Manufacturing Corporation, are unreliable and should be rejected by the Department. Second, respondent claims that, although Tonikitex was not mentioned by name, there is an almost one-for-one match between input prices reported in the recent telex with the unreliable and unverified data reported for Tonikitex and used in past reviews.

The respondent adds that, even if the recent Indonesian telex figures are legitimate, the Department should nevertheless decline to use them because the costs for yarn, factory overhead and profit do not relate to the production of shop towels. Therefore the respondent requests that the Department reject the Indonesian data in toto and use the more reliable Pakistani data as argued in Comment 6.

Department's Position: We disagree. The respondent failed to substantiate its allegations with evidence and/or documentation that the Indonesian data is indeed recycled and unreliable. More importantly, the statute does not direct the Department to obtain information derived from identical merchandise. As described in the previous comment, the statute requires that, to the extent possible, the country within which we value the factors of production be at a level of economic development comparable to that of the NME country and be a significant producer of comparable merchandise. (19 U.S.C. 1677b(c)(4)).

We have therefore determined that Indonesia, for purposes of this review, is an appropriate alternate surrogate country. Furthermore, we have addressed this same argument in a prior administrative review and confirmed that the Indonesian data are appropriate. See *Shop Towels of Cotton from the PRC; Notice of Final Results of Antidumping Duty Administrative Review*, (56 FR 4040, February 1, 1991).

Comment 6: Respondent argues that the Department should choose Pakistan as its primary surrogate economy for the following four reasons. First, respondent claims that the Pakistani shop towel industry is more similar to that of the PRC than India's cottage industry. Respondent asserts that the input costs in the Indian industry will necessarily reflect the fact that, as small-volume manufacturers, they are unable to benefit as TAC does from the economies of scale gained by purchasing and producing in large quantities.

Second, respondent claims that Pakistani yarn prices better reflect the cost of the lower-quality yarn used by TAC. Respondent argues that since the Indian data do not specify the yarn content, the Department should use the Pakistani yarn price, which reflects a waste-fiber content as high as 25 percent. TAC's yarn consists of 75 percent waste fiber.

Third, respondent argues that the Pakistani economy is more comparable to the PRC than Indonesia's. Respondent supports its argument by stating that, in 1990, Pakistan's GNP per capita was six percent greater than the PRC's, whereas Indonesia's was 34 percent greater. Respondent also cites *Chrome-Plated Lug Nuts from the People's Republic of China* (56 FR 46153, September 10, 1991), where the Department used Pakistan as the surrogate.

Finally, respondent argues that Pakistani data are more reliable because they are supported by DOC-verified data obtained during the investigation of *Shop Towels from Bangladesh*. Respondent argues that the verified Bangladeshi factory overhead rates lend validity to the Pakistani data, while discrediting the Indonesian data, because the Bangladeshi data closely correspond with the data from Pakistan.

Department's Position: As we stated above, the statute requires that, to the extent possible, surrogate countries be at a level of economic development comparable to that of the NME country and be significant producers of comparable merchandise. In this and past administrative reviews, the Department has determined that India, Pakistan and Indonesia are all comparable to the PRC in terms of economic development and are significant producers of comparable merchandise. If anything, the use of Indian values is warranted by reason of the greater similarity in economic development. There is nothing in the statute, the Department's regulations or the record of this investigation which suggests that alleged greater similarities in industry structure or in raw material composition should dictate our evaluation of the statutory criterion of comparability in economic development. Moreover, the verified experience of Bangladeshi shop towel producers has no bearing on the validity of either Pakistani or Indonesian data for purposes of this review. The Department possesses the clear authority to select different surrogate country data in valuing NME factors or production, so long as that conforms with the statutory guidelines. This is precisely what we have done in the instant review.

Final Results of the Review

As stated in our preliminary results, the January 1992 wholesale price indices were not, at that point, available for use

in deflating current factor prices to the period of review. We have now adjusted the affected calculations using January 1992 price indices. As a result, we determine the dumping margins to be:

Producer/exporter	Margin (percent)
TAC	72.14
Chinatex	122.81
CNART	122.81
All other companies without specific rates	122.81

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate(s) for the reviewed company(ies) and any other company without a company-specific rate will be as listed above; (2) for previously reviewed or investigated companies with company-specific rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 1, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-16153 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-DB-M

[C-421-601]

Standard Chrysanthemums From the Netherlands; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) has terminated the countervailing duty administrative review of standard chrysanthemums from the Netherlands initiated on April 13, 1992 (57 FR 12797).

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Marie MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 31, 1992, Vereniging van Bloemenveilingen in Nederland and the Bedrijfschap voor de Groothandel in Bloemkwekerijprodukten, exporters, requested an administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands for the period January 1, 1991 through December 31, 1991. No other interested party requested the review. On April 13, 1992, the Department initiated the administrative review for that period (57 FR 7910).

The exporters withdrew their request for review on June 3, 1992. The withdrawal was timely within the meaning of 19 CFR 355.22(a)(3). As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: June 26, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-16004 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651); 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 92-078. *Applicant:* St. Louis University, School of Medicine, 1402 South Grand Boulevard, St. Louis, MO 63104. *Instrument:* High Intensity Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to photolyse caged compounds as part of ongoing research conducted to further understand the molecular mechanisms by which the neurotransmitter serotonin affects cells in the brain. *Application Received by Commissioner of Customs:* June 5, 1992.

Docket Number: 92-079. *Applicant:* Vanderbilt University, School of Medicine, 23rd Avenue South at Pierce, Nashville, TN 37232-6600. *Instrument:* Micromanipulator, Model MM-113-L. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instrument will be used to study the mechanism of vision in an invertebrate species—the fruit fly. In addition, the instrument will be used on an individualized basis to teach graduate level and post-doctorate students techniques useful to their own research. *Application Received by Commissioner of Customs:* June 8, 1992.

Docket Number: 92-080. *Applicant:* Rutgers University, P.O. Box 231, Blake Hall, Cook Campus, New Brunswick, NJ 08903. *Instrument:* Fluorometer, Model Aquatracka MK III. *Manufacturer:* Chelsea Instrument Ltd., United Kingdom. *Intended Use:* The instrument will be installed on a shipboard CTD unit, and used for studies to relate biomass to the distribution of nutrients, oxygen and suspended sediment. The materials to be studied are microscopic marine algae, particles, and dissolved substances in coastal waters off New

Jersey. *Application Received by Commissioner of Customs:* June 9, 1992.

Docket Number: 92–081. *Applicant:* U.S. Department of Agriculture, Agricultural Research Service, National Soil Tilth Laboratory, 2150 Pammel Drive, Ames, IA 50011. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan, Germany. *Intended Use:* The instrument will be used for studies of soils, plants, water and microbial populations.

The following experiments will be conducted:

1. Label plants with ^{13}C and ^{15}N in order to study the dynamics of plant residue decomposition in soil.
2. Apply ^{15}N enriched fertilizers to agricultural plots to study the dynamics of movement and uptake of nitrogen.
3. Assessing the impact of farming systems on ground water quality in terms of nitrate movement into the ground water using ^{15}N enriched sources of nitrogen.
4. Assess the movement of herbicides through the vadose zone utilizing isotopic ratios of $^{12}C/^{13}C$ from soil samples following applications of ^{13}C enriched herbicides.
5. Measuring the age of ground water by determination of the isotopic ratios of oxygen.

The objective of these experiments is to provide a clean source of drinking water, but at the same time insure that agricultural production is maintained at the level required to feed our population. *Application Received by Commissioner of Customs:* June 11, 1992.

Docket Number: 92–082. *Applicant:* University of Arizona, Department of Geosciences, Gould-Simpson Building, room 208, Tucson, AZ 85721. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* VG Isotech, Ltd., United Kingdom. *Intended Use:* The instrument will be used to analyze trace key isotope ratios (Nd, Sr, Os, Pb) that are useful for geological studies dealing with the evolution of the continental crust. In addition, the instrument will be used in demonstration of technique in seminars on analytical techniques in geology. *Application Received by Commissioner of Customs:* June 11, 1992.

Docket Number: 92–083. *Applicant:* Washington University, One Brookings, Drive, St. Louis, MO 63130. *Instrument:* Two Micromanipulators, Models WR–89–R and MM–113–R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* The instrument will be used to study ion channels in nerve cell membranes in experiments involving recording the flow of ionic current through ion channels gated by the neurotransmitter glutamate. The objective of these experiments is to understand how the channels work—how glutamate causes them to open and how they conduct the ions through the membrane. *Application Received by Commissioner of Customs:* June 16, 1992.

Docket Number: 92–084. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Myograph-Transducers, Electronic Display Box, Model 440A. *Manufacturer:* JP Trading, Denmark. *Intended Use:* The instrument will be used to investigate the contractile properties of smooth muscle in rate blood vessels. *Application Received by Commissioner of Customs:* June 17, 1992.

Docket Number: 92–085. *Applicant:* University of California, Davs, Department of LAWR, Viehmeyer Hall, Davis, CA 95616. *Instrument:* Spectrometer Field Portable, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* The instrument will be used for *in situ* spectral reflectance measurements in order to identify minerals in rocks and soils and organic compounds in vegetation. *Application Received by Commissioner of Customs:* June 17, 1992.

Docket Number: 92–074. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551–5997. *Instrument:* (2) Electronic Digital Fish Measuring Systems, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* The instruments will be used for research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Application Received by Commissioner of Customs:* May 27, 1992.

Docket Number: 92–086. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, Center for Dielectric Studies, University Park, PA 16802. *Instrument:* Infrared Radiation Focussing Furnace. *Manufacturer:* Ulvac Sinku-Riko, Inc., Japan. *Intended Use:* The instrument will be used to sinter ceramics used in the microelectronics industry, looking at the effect of complex (designed) temperature profiles on the sintering behavior, microstructural development, and electrical properties of these materials. Experiments will consist of using a high precision dilatometer to measure the shrinkage of these materials during sintering, and to control the sintering of these materials according to a programmed shrinkage rate (this is known as the rate controlled sintering). *Application Received by Commissioner of Customs:* June 17, 1992.

Docket Number: 92–015R. *Applicant:* Washington University School of Medicine, Department of Cell Biology and Physiology, 660 South Euclid Avenue, Box 8228, St. Louis, MO 63110. *Instrument:* Two (2) Micromanipulators and Mounting Accessories, Models WR–89–L and MM–3–R. *Manufacturer:* Narishige Scientific Instruments, Japan. Original notice of this resubmitted application was published in the **Federal Register** of March 16, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–15999 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,663,893, Entitled "End Deflector For Abrasive Water Jet Slot Cutter," and U.S. Patent 4,708,214, Entitled "Rotatable End Deflector For Abrasive Water Jet Drill" to AQUA-DYNE, Inc., having a place of business in Houston, Texas. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a method for machining having an as-cut finish formed of a brittle crystalline semiconductor material, comprising several steps for operation. And an abrasive water jet drill for producing a cylindrical water jet containing entrained abrasive material using several other parts and a rotating means for rotating said tube whereby the water jet exiting from the outlet as a drilling fluid.

The availability of the invention for licensing was published Vol. 52, No. 146,28479 July 30, 1987 and Vol. 53. No. 119,23302, June 21, 1988 respectively.

A copy of the above identified U.S. Patent may be obtained from the U.S. Patent & Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151, Phone (703) 487–4732. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92–16119 Filed 7–8–92; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Cash Settled Three Year Interest Rate Swap Futures Contract and the Options on that Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted proposed amendments to its cash settled three year interest rate swap futures and futures option contracts that would change the instrument underlying the futures contract to a ten year interest rate swap contract from a three year interest rate swap contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before August 10, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the CBT three year swap futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Stephen A. Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 354–7303.

SUPPLEMENTARY INFORMATION: The CBT was designated as a contract market in cash settled three year interest rate swap futures on January 29, 1991 and was designated as a contract market in options on that futures contract on February 26, 1991. The three year swap futures contract is cash settled at expiration based on the fixed rate side of the swap. The cash settlement price is obtained from a survey of at least seven interest rate swap dealers selected from a list approved by the CBT. The final settlement price is based on the median of the average yields obtained in the survey.

Under the CBT's proposal, the subject of the dealer survey would be changed to a generic ten year interest rate swap from a generic three year interest rate sap, and the names of the futures and option contracts would be amended to reflect that change. The survey procedure would remain the same. The other terms and conditions of the three year swap futures and option contracts would not be affected materially.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 2, 1992.

Gerald Gay,

Director.

[FR Doc. 92–15998 Filed 7–8–92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces will meet in closed session on July 16–17, September 9–11, and November 9–10, 1992 at Booz, Allen & Hamilton, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will investigate the operational utility and costs associated with employing low observable technology for Special Operations Forces (SOF) mission areas.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: July 2, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–16080 Filed 7–8–92; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Joint Precision Interdiction

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed

session on July 29–30, 1992 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: 2 July 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92–16079 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Engineering in the Manufacturing Process

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Engineering in the Manufacturing Process will meet in open session on July 27–28, 1992 at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Hal Bertrand at (703) 578–2775.

Dated: July 2, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–16078 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Privacy Act of 1974; Addition of a System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Addition of a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The addition will be effective August 10, 1992, unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson, at (703) 697–3491 or DSN: 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 08, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 05, 1986
51 FR 7317 Mar. 05, 1986
51 FR 16735 May 06, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 09, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 09, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Mailing Addresses)
55 FR 27868 Jul. 06, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 26800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32181 Jul. 15, 1991
56 FR 63718 Dec. 05, 1991
57 FR 1907 Jan. 16, 1992

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on XXXXXXXXXXX XX, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: July 2, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

F040 AF NAFI B

SYSTEM NAME:

Nonappropriated Fund (NAF) Civilian Personnel Records-Manpower.

SYSTEM LOCATION:

Headquarters, United States Air Force, Air Force Morale, Welfare, and Recreation Center, Randolph Air Force Base, TX 78150-7000, all major commands and Human Resources offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Pending, current and former Air Force nonappropriated fund civilian employees assigned to billeting and morale, welfare, and recreation Nonappropriated Fund Instrumentalities (NAFI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment information including position authorization, personnel data to include name, grade, Social Security Number and date of birth, suspense information, position control information, projected and historical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by as implemented by Air Force Regulation 40–7, Nonappropriated Funds Personnel Management and Administration, and Executive Order 9397.

PURPOSE(S):

To provide system support to HQ AFMWRC and other serviced activities required to maintain a personnel management and records keeping system that pertains to evaluation,

authorization and position control, position management, staffing, inventory, career management, benefits and the suspensing and processing of personnel actions; to provide information to all levels of management; to provide information for the transfer between NAFIs, and to provide information to employee unions as prescribed by negotiated contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation apply to this system.

Records may also be disclosed to employee unions as prescribed by negotiated contracts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Master personnel records for pending employees are transferred to the active file upon appointment of the employee; master personnel records for active employees are transferred to the separated employee history file where they are retained for two years subsequent to separation, then transferred to the National Personnel Records Center. The AF Form 2545, NAFI Notification of Personnel Action, is disposed of in accordance with AFR 40-7. Coding forms, on-line terminal message sheets, system quality control products, computer printouts, employee career brief, locator files and personnel and position control registers are destroyed after use. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

HQ AFMWRC/MWOSB, Randolph Air Force Base, TX 78150-7000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or the servicing Civilian Personnel office.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or the servicing Civilian Personnel office.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers; financial institutions; educational institutions; police and investigating officers; documents requesting, paying and appointing individual; documents related to designation of benefits and beneficiaries. Information obtained from subject of the record and official personnel folder.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-16082 Filed 7-8-92; 8:45 am]
BILLING CODE 3810-01-F

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend nine existing systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The amended systems will be effective August 10, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330-1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697-3491 or DSN: 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 08, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 05, 1986
51 FR 7317 Mar. 05, 1986
51 FR 16735 May 06, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 09, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 09, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Mailing Addresses)
55 FR 27868 Jul. 06, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 26800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32181 Jul. 15, 1991
56 FR 63718 Dec. 05, 1991
57 FR 1907 Jan. 16, 1992

The amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety.

Dated: July 2, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

AMENDMENTS

F011 AF A

SYSTEM NAME:

Locator, Registration and Postal Directory Files, (56 FR 23877, May 24, 1991).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system."

* * * * *

RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

* * * * *

F011 AF A

SYSTEM NAME:

Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used for directory service and forwarding individual personal mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information, membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders/cabinets or card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers: Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces; the individuals, or from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F011 AF MP A

SYSTEM NAME:

Congressional and Other High Level Inquiries, (51 FR 41384, November 14, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Force Military Personnel Center; major commands; field operating agencies; Consolidated

Base Personnel Offices (CBPOs) at Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active duty Air Force military personnel; Air Force Reserve personnel, and personnel retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent."

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RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

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SYSTEM MANAGER(S) AND ADDRESS:

Add to end of entry "and commanders of headquarters of unified and specified commands for which Air Force is Executive Agent."

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F011 AF MP A

SYSTEM NAME:

Congressional and Other High Level Inquiries.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center; major commands; field operating agencies; Consolidated Base Personnel Offices (CBPOs) at Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force military personnel; Air Force Reserve personnel, and personnel retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background information and information reflecting Air Force personnel policies and procedures; copies of inquiries received from the Office of the President, members of Congress and other high level sources requesting information on behalf of a constituent; copies of replies to such inquiries including transmittal media used enroute from and to the Secretary of the Air Force, Office of Legislative Liaison (SAF/LL).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and 10 U.S.C. 8032, The Air Staff, general duties; implemented by Air Force Regulation 11–7, Air Force Relations with Congress.

PURPOSE(S):

Information pertinent to an inquiry forwarded to SAF/LL for preparation of the reply to the high level requester. In some instances response may be direct to the requester without referral through SAF/LL. However, when required by directives, copies of such responses are furnished SAF/LL. The records may be used in responding to subsequent inquiries concerning the same individual. The record system is audited periodically to determine trends on the nature of complaints and questions and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly cleared for need-to-know. Records are stored in security file containers/cabinets, locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained for up to 18 months depending on category, then destroyed by tearing into pieces, shredding, macerating, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Chief of Staff for Personnel, Headquarters United States Air Force; commanders of major air commands, numbered air forces or comparable level activities, and commanders of headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or respective local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests from individuals must contain reasonable identifying particulars about the subject in question.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or local respective system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual's request must contain reasonable identifying particulars about the subject in question.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information provided by major command or consolidated base personnel office personnel, manual or automated personnel records, Air Force policies and procedures, copies of inquiries, congressional/high level officials'/constituents' comments or requests and Air Force replies thereto.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F012 AF A

SYSTEM NAME:

Information Requests-Freedom of Information Act. (51 FR 41384, November 14, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Air Force installations and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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STORAGE:

Add to end of entry "in computers and on computer output products."

RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person[s] responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Released records are retained in office files for two years after annual cutoff. Denied records are retained in office files for six years. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the local Freedom of Information Act (FOIA) manager at a specific Air Force installation."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the local FOIA manager at a specific Air Force installation."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

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F012 AF A

SYSTEM NAME:

Information Requests-Freedom of Information Act.

SYSTEM LOCATION:

Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administration of release of information to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, The Freedom of Information Act as implemented by Air Force Regulation 12-30, Disclosure of Air Force Records to the Public.

PURPOSE(S):

To control administrative processing of requests for information used by FOIA managers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Released records are retained in office files for two years after annual cut-off. Denied records are retained in office files for six years then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the local FOIA manager at a specific Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the local FOIA manager at a specific Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

FOIA manager as result of requests for information from members of the public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F012 AF B

SYSTEM NAME:

Privacy Act Request File. (51 FR 41384, November 14, 1985).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "At all levels of the Air Force having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies; major commands; field operating agencies; installations and activities, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All persons who request access to, information from, or amendment of records about themselves under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) from the Department of the Air Force Activities, or from headquarters of unified and specified commands for which Air Force is Executive Agent."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

May be disclosed to the Office of Management and Budget or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act by the Department of the Air Force, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

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RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

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SYSTEM MANAGER(S) AND ADDRESS(ES):

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force; Directors of Information Management at major commands or field operating agencies; Chief, Information Management at Air Force installations where the requested or disputed records are located, or records custodian at headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Written requests should include the person's full name, grade (if applicable), and some other personal information which could be verified from the person's file. For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F012 AF B

SYSTEM NAME:

Privacy Act Request File.

SYSTEM LOCATION:

At all levels of the Air Force having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies; major commands; field operating agencies; installations and activities, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who request access to, information from, or amendment of records about themselves under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) from the Department of the Air Force Activities, or from headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, The Privacy Act of 1974, as implemented by Air Force Regulation 12–35, Air Force Privacy Act Program.

PURPOSE(S):

To record, process and coordinate individual requests for access to, or amendment of, personal records, and appeals on denials of requests for access or amendments to personal records; to prepare legal opinions and interpretations for system managers and the Secretary of the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

May be disclosed to the Office of Management and Budget or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act by the Department of the Air Force, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or microfilm.

RETRIEVABILITY:

Retrieved by name of requester.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Requests for information are destroyed when no longer needed; requests for access or amendment and appeals of denial are destroyed four years after final action or three years after adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force; Director of Information Management at major commands or field operating agencies; Chief, Information Management at Air Force installations where the requested or disputed records are located, or records custodian at headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager. Written requests should include the person's full name, grade (if applicable), and some other personal information which could be verified from the person's file. For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual requester, Department of the Air Force organizations, other Department of Defense organizations, and agencies of Federal, state, and local governments, as applicable or appropriate for processing the case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 AF A

SYSTEM NAME:

Automated Personnel Management System, (53 FR 50073, December 13, 1988).

CHANGES:

SYSTEM NAME:

Change system name to "Biographical Data and Automated Personnel Management File."

SYSTEM LOCATION:

Delete entry and replace with "Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of unified and specified commands for which Air Force is the Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active duty Air Force military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors may be included when records are created which are identical to those on military members. Army, Navy, and Marine Corps active duty military and civilian personnel may be included when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent. Records may be maintained in this system on personnel in a temporary duty (TDY) status for the duration of the TDY."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, names of family members, religion, professional expertise and appointments, membership in professional societies, civic activities and state of license.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin.

Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code or Military Occupation Code, position number, date assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

Additional information as deem appropriate by the commander/supervisor for effective personnel management, when not filed in a separate system."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "This system is established as a management tool to provide commanders and supervisors with a ready reference information file for managing their personnel, manpower and resources.

To provide convenient ready reference biographical data for commanders/supervisors requirements.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization,

deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/telephone inquiries; updating and/or changing information in computer and/or individual record."

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STORAGE:

Delete entry and replace with "Maintained in file folders, in computers and on computer output products."

RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000.

Local System managers: Commanders/supervisors at the installation, base, unit, organization, office or function to which the individual is assigned or attached. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual, personnel or training records and records created by commander/supervisor."

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F030 AF A

SYSTEM NAME:

Biographical Data and Automated Personnel Management System.

SYSTEM LOCATION:

Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of unified and specified commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors may be included when records are created which are identical to those on military members. Army, Navy, and Marine Corps Active duty military and civilian personnel may be included when assigned to unified and specified commands for which Air Force is the Executive Agent. Records may be maintained in this system on personnel in a Temporary Duty (TDY) status for the duration of the TDY.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, and names of family members, religion, professional expertise and appointments, membership in professional societies, civic activities and state of license.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin.

Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code and Military Occupation Code, position number, date assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):

This system is established as a management tool to provide commanders and supervisors with ready reference information file for managing their personnel, manpower and resources.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization, deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/telephone inquiries; updating and/or changing information in computer and/or individual record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers: Commanders/supervisors at the installation, base, unit, organization, office or function to which the individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, personnel or training records and records created by commander/supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 AF JA A

SYSTEM NAME:

Confidential Statement of Affiliations and Financial Interests, (51 FR 41388, November 14, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Office of the General Counsel, Office of the Secretary of the Air Force, Washington, DC 20330–1000, and Office of The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

At end of entry delete "HQ USSPACECOM," and add "headquarters of unified and specified commands for which Air Force is Executive Agent."

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RETRIEVABILITY:

Delete entry and replace with "Retrieved by name."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and metal cabinets."

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SYSTEM MANAGER(S) AND ADDRESS(ES):

Delete entry and replace with "The Assistant General Counsel (Personnel), Office of the Secretary of the Air Force, Washington, DC 20330–1000, and The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or Deputy Standards of Conduct Counsellor at system location."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the system manager or Deputy Standards of Conduct Counsellor at system location."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F030 AF JA A

SYSTEM NAME:

Confidential Statement of Affiliations and Financial Interests.

SYSTEM LOCATION:

Office of the General Counsel, Office of the Secretary of the Air Force, Washington, DC 20330–1000, and Office of The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations, and headquarters of unified and specified commands for

which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian personnel paid at a level of GS–13 through GS–15; Air Force military personnel in the rank of Lieutenant Colonel or Colonel whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are "advisors" or "consultants." Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counsellor/ Deputy Counsellor review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees."

PURPOSE(S):

The review of the statements by the individual's supervisor and deputy counselor to determine the existence of or potential for a conflict of interest in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained up to two years after the individual has left employment or terminated responsibilities which require disclosure of information. Destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Assistant General Counsel (Personnel), Office of the Secretary of the Air Force, Washington, DC 20330–1000, and The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or Deputy Standards of Conduct Counsellor at system location.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or Deputy Standards of Conduct Counsellor at system location.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual or from personnel designated by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF A

SYSTEM NAME:

Officer Quality Force Management Records, (51 FR 44388, December 9, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters United States Strategic Command (HQ USSTRATCOM), Personnel Programs Division, Directorate of Manpower and Personnel, Offutt AFB NE 68113–1010. Headquarters Air Force Communications Command (HQ AFCC), Force Management Division (DPAFA), Directorate of Personnel Programs, Scott AFB, IL 62225–6001."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "SAC" and insert "USSTRATCOM."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

PURPOSE(S):

Delete "SAC" and insert "USSTRATCOM."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know. Those in computer storage devices are protected by computer system software. Records and computer software are stored in locked cabinets and locked rooms in buildings protected by guards."

RETENTION AND DISPOSAL:

Add to end of entry "Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS(ES):

Delete entry and replace with "Chief, Personnel Programs Division (J122), Directorate of Manpower and Personnel, HQ USSTRATCOM, Offutt AFB, NE 68113–1010. Chief, Force Management Division (DPAF), Directorate of Personnel Programs, HQ AFCC, Scott AFB, IL 62225–6001."

* * * * *

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager.

Full name, military status, grade and SSN are required to access records. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information obtained from source documents, the individual concerned, member's commander, Personnel Programs Division, HQ USSTRATCOM, Force Management Division, HQ AFCC, Consolidated Base Personnel Offices, and the office of the Judge Advocate General for each command."

* * * * *

F035 AF A

SYSTEM NAME:

Officer Quality Force Management Records.

SYSTEM LOCATION:

Headquarters United States Strategic Command (HQ USSTRATCOM), Personnel Programs Division, Directorate of Manpower and Personnel, Offutt AFB NE 68113–1010. Headquarters Air Force Communications Command (HQ AFCC), Force Management Division (DPAFA), Directorate of Personnel Programs, Scott AFB, IL 62225–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty officers assigned or attached to HQ USSTRATCOM or HQ AFCC whose performance, conduct, or alleged misconduct may or has resulted in initiation of administrative action(s).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to substandard performance, unacceptable conduct or unfitness, and status and dates of pending or completed administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 8074, Commands; territorial organization, and Executive Order 9397.

PURPOSE(S):

To provide information to Commander in Chief, HQ USSTRATCOM, Deputy Chief of Staff for Personnel, HQ AFCC, and staff members as appropriate who make decisions on officers' qualifications for continuation on active duty, or further consideration for promotion. Used to evaluate and monitor status of actions on subjects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know. Those in computer storage devices are protected by computer system software. Records and computer software are stored in locked cabinets and rooms in buildings protected by guards.

RETENTION AND DISPOSAL:

Retained until superseded, obsolete, or no longer needed for reference, whichever is sooner. Files will be destroyed not later than 2 years from last entry. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief, Personnel Programs Division, Directorate of Manpower and Personnel, HQ USSTRATCOM, Offutt AFB, NE 68113–1010. Chief, Force Management Division, Directorate of Personnel Programs, HQ AFCC, Scott AFB, IL 62225–6001.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to access records. Visitors must provide proof of identity such as a military ID card, valid drivers license, or some item of information which can be verified from the records.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents, the individual concerned, member's commander, Personnel Programs Division, HQ USSTRATCOM, Force Management Division HQ AFCC, Consolidated Base Personnel Offices, and the office of the Judge Advocate General for each command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP O

SYSTEM NAME:

Unit Assigned Personnel Information, (57 FR 1908, January 16, 1992).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters United States Air Force; major command headquarters; all Air Force installations and units, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

At end of entry delete "HQ USSPACECOM," and add "headquarters of unified and specified commands for which Air Force is Executive Agent."

* * * * *

F035 AF MP O

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters United States Air Force; major command headquarters; all Air Force installations and units, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Manual 30–3, Vol III, Mechanized Personnel Procedures, Air Force Manual 30–130, Vol I, Base Level Military Personnel System, and Executive Order 9397.

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and

records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F190 AF PA A

SYSTEM NAME:

Special Events Planning-Protocol, (51 FR 41399, November 14, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Office of the Secretary of the Air Force, Public Affairs (SAF/PAC); Air Force installations and USAF Recruiting Service offices, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013."

* * * * *

RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

* * * * *

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F190 AF PA A

SYSTEM NAME:

Special Events Planning-Protocol.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, Public Affairs (SAF/PAC); Air Force installations and USAF Recruiting Service offices, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-Air Force civilians, generally, but not limited to civilian leaders of the local community. Segments of the system may be specialized; e.g., active and retired military persons identified by special interests, teachers or other persons in governmental agencies qualified or considered to lecture in Air Force training courses, winners of AF-sponsored Science Fairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data usually including, but not limited to: Name; business and home address and telephone numbers; name of spouse and family; description of positions in business and community affiliations with Air Force-oriented civic organizations and photographs. For Science Fair winners: Name/date of fairs; name of school; year in school; name of project; judging category, previous selection as Air Force winner with year and name of fair. May include summaries of circumstances of visits to the installation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used by Public Affairs Officers, Executive Officers, Protocol Officers, or Commanders as reference for planning official functions, reporting to higher headquarters, selecting lecturers for training courses, and submitting nominations for Air Force or Department of Defense conferences or other functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in notebooks/binders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Office of the Secretary of the Air Force, Office of Public Affairs (SAF/PAC), Washington, DC 20330–1000, or the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency

determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the public media, a state or local government, source documents such as reports, Federal agencies staff recommendations, and Science Fair questionnaires.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–16083 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–01–F

Department of the Navy

Notice of Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Government-owned Inventions; Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Requests for copies of the patent applications cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Patent Application 501,707: Method for Laser-Assisted Silicon Etching Using Halocarbon Ambients; filed 29 March 1990

Patent Application 508,317: Method for Laser-Assisted Etching of III-V and II-VI Semiconductor Compounds Using Chloroflurocarbon Ambients; filed 10 April 1990

Patent Application 589,839: Laser Texturing; filed 26 September 1990

Patent Application 591,930: Excimer Laser Dopant Activation of Backside Illuminated CCD'S; filed 2 October 1990

Patent Application 664,046: Laser Controlled Decomposition of Chlorofluorocarbons; filed 21 February 1991

Patent Application 709,671: Method of Laser Processing Ferroelectric Materials; filed 3 June 1991

Patent Application 762,538: Laser-Assisted Fabrication of Biopolar Transistors in Silicon-on-Sapphire (SOS); filed 18 September 1991

Patent Application 831,830: Method for Laser-Assisted Etching of III-V and II-VI Semiconductor Compounds Using Chlorofluorocarbon Ambients; filed 21 January 1992

Patent Application 856,010: Laser Formation of Graded Junction Devices; filed 17 March 1992

Patent Application 861,409: Method of Rapid Sample Handling For Laser Processing; filed 31 March 1992

Patent Application 861,410: Photon Controlled Decomposition of Nonhydrolyzable Ambients; filed 31 March 1992

Patent Application 876,615: Conformal Waveguide for Optical and Electronic Integration; filed 30 April 1992

Dated: June 24, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92–16008 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0020]

OMB Clearance Request for Qualified Products Identification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing information collection requirement (9000–0020).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Qualified Products Identification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, General Services Administration, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified when any of the following conditions apply:

1. The time required to test the item for conformance to the specification exceeds 30 days (720 hours).

2. The tests would require equipment not commonly available.

3. The items are emergency lifesaving or survival equipment.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1, Qualification Requirements, is included in the solicitation. The offeror must insert the item name and test number to prove that the item offered is prequalified. Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents, 2,700; *responses per respondent,* 10; *total annual responses,* 27,000; *preparation hours per response,* 17; and *total response burden hours,* 4,590.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0020, Qualified Products Identification, in all correspondence.

Dated: June 29, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–16009 Filed 7–8–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000-0006]

OMB Clearance Request for Subcontracting Plans/Subcontracting Report for Individual Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension of a currently approved information collection report (9000-0006), SF 294.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontracting Plans/ Subcontracting Report for Individual Contracts (Standard Form 294).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on SF 294 is used to assess contractors' compliance with their subcontracting plans.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents, 1,533; *responses per respondent*, 34.47; *total annual responses*, 52,843; *preparation hours per response*, 5.73; and *total response burden hours*, 302,790.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: *Recordkeepers*, 1,533; *hours per recordkeeper*, 121; and *total recordkeeping burden hours*, 185,493.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0006, Subcontracting Plans/ Subcontracting Report for Individual Contracts (SF 294), in all correspondence.

Dated: June 29, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-16010 Filed 7-8-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0007; FAR Case 91-78]

Request for an Extension of OMB Approval for Summary Contract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension of OMB approval for control number 9000-0007.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection regarding Summary Subcontract Report (SF 295).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, General Services Administration (GSA) (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

In conjunction with these plans, contractors must submit reports of their progress on SF 295, Summary Subcontract Report.

Information submitted on SF 295 is used to assess contractor's compliance with their subcontracting plans.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 1,542; *responses per respondent*, 3.61; *total annual responses*, 5,568; *preparation hours per response*, 16.21; and *total response burden hours*, 90,257.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0007, FAR case 91-78, Summary Subcontract Report, in all correspondence.

Dated: June 30, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-16011 Filed 7-8-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0003]

OMB Clearance Request for Statement of Contingent or Other Fees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision of a currently approved information collection requirement (9000-0003) for SF 119.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a revision of a currently approved information collection requirement concerning Statement of Contingent of Other Fees, Standard Form 119.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contractor's arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. By way of this representation, prospective contractors are required to state whether or not they have used such an arrangement to obtain the contract.

The information is used by Government Contracting Officers to determine the appropriateness of awarding a contract to the submitting firm.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 2,500; *responses per respondent*, 10; *total annual responses*, 25,000; *preparation hours per response*, .33; and *total response burden hours*, 8,250.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0003, Statement of Contingent or Other Fees, SF 119, in all correspondence.

Dated: June 29, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-16012 Filed 7-8-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-574.
3. 1902-0116.
4. Gas Pipeline Certificates: Hinshaw Exemption.
5. Extension.
6. Other (One-time filing).
7. Mandatory.
8. Businesses or other for-profit.
9. 1 respondent.
10. 1 response.
11. 245 hours per response.
12. 245 hours.
13. FERC-574 data are used by the Commission in assessing applications for exemption from certain provisions of the Natural Gas Act by companies engaging in the transportation or sale for resale of natural gas in interstate commerce.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 1, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-16125 Filed 7-8-92; 8:45 am]

BILLING CODE 6450-01-M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–8.
3. 1902–0026.
4. Underground Gas Storage Report.
5. Extension.
6. Monthly.
7. Mandatory.
8. Businesses or other for-profit.
9. 36 respondents.
10. 12 responses.
11. 3 hours per response.
12. 1,296 hours.
13. FERC–8 data are used by the Commission in analyzing the total amount of storage gas to assure the continuity of natural gas service. The data are analyzed with regard to natural gas storage injections, withdrawals, balances and reservoir capacities to assure that the stored gas supply is adequate.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 1, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–16124 Filed 7–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Environment, Safety and Health

Environment, Safety and Health Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Environment, Safety and Health Advisory Committee.

Date and Time: Wednesday, July 29, 1992, 8 a.m.

Place: Red Lion Inn/Hanford House, 802 George Washington Way, Richland, WA 99352.

Contact: Lisa Kardell, U.S. Department of Energy, Office of Environment, Safety and Health (EH–50), Room 7A–075, Washington, DC 20585, Telephone: 202/586–1988.

Purpose of the Committee: To provide advice and guidance to the Department of Energy on matters relating to environment, safety and health at DOE facilities.

Purpose of the Meeting: To gather information regarding the integration of Environment, Safety and Health activities at Department of Energy sites and to consider future tasks.

Tentative Agenda

—Call to order by Robert F. Mathias, Designated Federal Official.
—Remarks by Chairperson Gebbie.
—Update on Environment, Safety and Health Activities at DOE by Paul L. Ziemer, Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy.
—Briefing on Safety and Quality Assurance at the Hanford Site.
—Briefing on Environmental Compliance at the Hanford Site.
—Briefing on the Role of the Contractor.
—Briefing on the Hanford Environmental Dose Reconstruction Project.
—Briefing on the Role of the State.
—Briefing on the Role of the Environmental Protection Agency.
—The Local Perspective.
—Indian Nations Perspective.
—Citizen Participation.
—Discussion on future tasks for ESHAC.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Lisa Kardell at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Persons wishing to attend the public meeting should provide their names to (202) 586–1988 by July 22, 1992.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 2, 1992.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 92–16123 Filed 7–8–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD92-07552T New Mexico-33]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 2, 1992.

Take notice that on June 30, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Formation in a portion of Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application consists of 10,240 acres located on the Jicarilla Apache Indian Reservation and covers all of sections 1-4, 9-16, and 21-24 in Township 25N, Range 4W, NMPM.

The notice of determination also contains BLM's findings that the referenced portion of the Mesaverde Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16040 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

Contractors Power Group, Inc.; Application

July 2, 1992.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 10552-002

c. *Date filed:* May 13, 1991.

d. *Applicant:* Contractors Power Group, Inc.

e. *Name of Project:* Mile 28 Water Power Project.

f. *Location:* On the Bureau of Reclamation's Milner-Gooding Canal, off Snake River, in Jerome County, Idaho Section 7, T8S, R20E, Boise Meridian. The transmission line is entirely on lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John J. Straubhar, P.E., P.O. Box 820, Twin Falls, ID 83303, (208) 788-0484.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219-2847.

j. This notice supplements the notice for this project issued April 9, 1992 (See 57 FR 13080), adding to the project description about 2 miles of 34.5-kV transmission line necessary to connect the project to the Idaho Power Company distribution system.

k. All comments on this project should have been filed in accordance with the requirements of the April 9, 1992, notice. Any additional comments, terms, and conditions on the transmission line must be filed within 15 days from the date of this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16088 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 2, 1992.

Take notice that ANR Pipeline Company ("ANR"), on June 30, 1992, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet, to be effective August 1, 1992:

Sixty-Fourth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's Quarterly PGA rate adjustment pursuant to Section 15 of the General Terms and Conditions of its Tariff.

ANR states that the filing proposes a $0.0838 per dekatherm (dth) increase in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates reflected on Substitute Sixtieth Revised Sheet No. 18. There are decreases in the gas cost components of the monthly D-1 demand rate of $0.021 per dth and the D-2 demand rate of $0.0021 per dth, from rates reflected on Substitute Sixtieth Revised Sheet No. 18.

Sixty-Fourth Revised Sheet No. 18 further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS-1 of $0.0757 per dth, from rates reflected on Substitute Sixtieth Revised Sheet No. 18.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16041 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-341-000 and EL92-35-000]

Arkansas Power & Light Co.; Initiation of Proceeding and Refund Report

July 2, 1992

Take notice that on June 30, 1992, the Commission issued an ordering the above-indicated dockets initiating and investigation in Docket No. EL92-35-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-35-000 will be 60 days after publication of this notice in the Federal Register.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16087 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

(July 2, 1992)

Take notice that on June 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1992:

Twenty-Ninth Revised Sheet No. 8

Fifth Revised Sheet No. 160
Fourth Revised Sheet No. 222

Fifth Revised Sheet No. 223
Fifth Revised Sheet No. 225
Fifth Revised Sheet No. 228
Sixth Revised Sheet No. 232

FGT states that Twenty-Ninth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing in Docket No. TQ92-4-34-000, effective June 1, 1992.

FGT also states that it is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes in Fourth Revised Sheet No. 222, Fifth Revised Sheet Nos. 223, 225 and 228, and Sixth Revised Sheet No. 232 contained herein. Additionally, Fifth Revised Sheet No. 160 updates the receipt point list contained in Rate Schedule PTS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16042 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-194-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

July 2, 1992.

Take notice that on June 29, 1992, Florida Gas Transmission Company ("FGT") hereby petitions the Federal Energy Regulatory Commission ("Commission") for a limited waiver of Commission policy and FGT's FERC Gas Tariff, to the extent necessary, to allow FGT to add a new delivery point to an existing agreement for firm transportation service under FGT's Rate Schedule FTS-1 and to an existing agreement for interruptible transportation service under FGT's Rate Schedule ITS-1 between FGT and Lake Apopka Natural Gas District ("Lake Apopka"), while permitting Lake Apopka to maintain its existing priority date.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same customer, Lake Apopka; (ii) the new delivery point will be located in the same geographic location as other existing delivery points at which FGT presently serves Lake Apopka; and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16043 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-12-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

July 2, 1992.

Take notice that on June 29, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Eighth Revised Sheet No. 4, and Thirty-Seventh Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective July 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-Eighth Revised Sheet No. 4 and Thirty-Seventh Revised Sheet No. 4.1 reflect a decrease of 57.77 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective June 1, 1992, in Docket No. TQ-11-25-000. MRT also states that since the May 29, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16044 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-43-000]

Mississippi River Transmission Corp.; Prefiling Conference

July 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 13, 1992, at 10:00 a.m., in Washington, D.C. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

The purpose of the conference is to address Mississippi River Transmission Corporation's summary of its proposal to comply with Order no. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call David Cain at (202) 208-0917.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16045 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-59-001, TQ92-9-59-001 and TF92-4-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 2, 1992

Take notice that Northern Natural Gas Company (Northern) on June 30, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff to become effective July 1, 1992:

Third Revised Volume No. 1

Seventy-First Revised Sheet No. 4A
One Hundred-Tenth Revised Sheet No. 4B
Seventy-Eighth Revised Sheet No. 48.1
Twenty-Sixth Revised Sheet No. 4H

Original Volume No. 2

One Hundred-Seventeenth Rev. Sheet No. 1C

Northern states that the filing is a Flex PGA filing in accordance with § 154.308 of the Commission's regulations to adjust Northern's Base Average Commodity Gas Purchased Cost as required by the Commission's Order Nos. 483 and 483-A (PGA Rulemaking).

Northern states that the filing establishes a base average gas purchased rate of $1.8059 (Sales Recovery Rate for purposes of the IGIC) which will be in effect from July 1, 1992, through July 31, 1992. Northern further states that the filing reflects a $0.4000 per MMBtu decrease from the quarterly rate established in Docket No. TQ92-9-59-000 dated May 29, 1992 and effectuated July 1, 1992 and a $0.1500 per MMBtu decrease from the rate effectuated on June 1, 1992 in Docket No. TQ92-8-59-000.

Northern states that copies of the filing have been mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16046 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-46-000]

Pacific Gas Transmission Company; Conference

July 2, 1992.

Take notice that on Tuesday, July 14, and Wednesday, July 15, 1992, a conference will be convened in the captioned restructuring docket in accordance with the provisions of Order No. 636. This conference is being held so that Pacific Gas Transmission Company (PGT) can discuss with the Commission Staff and the intervenors in this proceeding its June 1 restructuring proposal to narrow the range of issues identified affecting PGT's compliance with Order No. 636.

[Docket No. RP92-191-000]

Northwest Pipeline Corporation; Compliance Filing

July 2, 1992.

Take notice that on June 22, 1992, Northwest Pipeline Corporation (Northwest) submitted four alternative allocation methodologies in response to the Commission's Order on Remand issued on May 6, 1992 in Docket Nos. RM91-2, *et al.*

Northwest states that the purpose of this filing is to obtain Commission approval of the appropriate methodology to allocate a share of Northwest's fixed Supplier Settlement Payment costs to Northwest's customers in compliance with Order Nos. 500, 528 and 528-A.

Northwest states that copies of the filing is being served on all parties of record in Docket No. RP89-137-000, *et al.*

Any person desiring to he heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20526, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16047 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

The conference will be held at the offices of the Federal Energy Regulatory Commission, at 810 First Street, NE., Hearing Room No. 1, Washington, DC. The conference will begin at 10 a.m. on July 14, 1992. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16048 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-157-000]

Pacific Offshore Pipeline Company; Technical Conference

July 2, 1992.

Take notice that, pursuant to the Commission's order issued June 1, 1992, in the captioned proceeding (59 FERC¶ 61,248), a technical conference will be held at 8:30 a.m. on Wednesday, July 15, 1992, at the Offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington DC, for the purpose of discussing any issues involved other than cost allocation and rate design.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-16049 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-164-002]

Tarpon Transmission Co.; Tariff Filing

July 2, 1992.

Take notice that on June 29, 1992, Tarpon Transmission Company (Tarpon) tendered for filing with the Commission as part of its FERC Gas Tariff, the following substitute tariff sheets to Tarpon's FERC Gas Tariff, Original Volume No. 1:

Substitute Ninth Sheet No. 2A
Substitute Second Sheet No. 86A
Substitute Third Sheet No. 96A

Tarpon states that it is also tendered for filing the following alternate sheets to its FERC Gas Tariff, Original Volume No. 1:

Alternate Substitute Ninth Sheet No. 2A
Alternate Substitute Second Sheet No. 86A
Alternate Substitute Third Sheet No. 96A

Tarpon states that it has filed the tariff sheet in compliance with Ordering Paragraph (B) of the Commission's "Order Accepting and Suspending Tariff

Sheets," issued May 29, 1992 in the above-referenced docket.

Tarpon states that copies of the filing are being mailed to all parties on Docket No. RP92–164 and to all of Tarpon's shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–16050 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–7–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-eighth Revised Sheet No. 10
Fifty-eighth Revised Sheet No. 10A
Thirty-ninth Revised Sheet No. 11
Twenty-ninth Revised Sheet No. 11A
Twenty-ninth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective August 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0989 per MMBtu from the rates set forth in the Out-of-Cycle PGA filed June 26, 1992 (Docket No. TQ92–6–18). No change are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing were served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–16051 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

Trunkline LNG Co.; Panhandle Eastern Pipe Line; Conference

July 2, 1992.

In the matter of Trunkline LNG Co., Docket Nos. RP92–122–000, RP81–85–000; Trunkline Gas Co., Docket Nos. RP92–123–000, RP92–124–000, RP92–126–000, RP87–15–000, RP87–15–029, RP87–15–030; Panhandle Eastern Pipe Line, Docket Nos. RP92–118–000, RP92–125–000, RP92–127–000, RP92–128–000.

A conference in the above-captioned proceedings will convene on Monday, July 13, 1992 at 10 a.m. The purpose of the conference is to allow the parties to review drafts of settlements which would resolve the matters which the Commission required to be addressed at the conferences established in orders issued in the captioned dockets on March 27, and March 31, 1992.[1] If necessary, the conference will be held in the Commission's meeting room on the Ninth Floor of the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–16052 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–946–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–946–DR), dated June 26, 1992, and related determinations.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, dated June 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 1992:

The county of Nobles for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–16053 Filed 7–8–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Fact Finding Invest. No. 16]

Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

By order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. By Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was extended to April 14, 1990. The term of this investigation was further extended to April 14, 1991 by Order issued April 5, 1990 (55 FR 13664, April 11, 1990) and to April 14, 1992 by Order issued June 5, 1991 (56 FR 26820, June 11, 1991). The Investigative Officer has now advised that in order to complete ongoing fact finding activities it is necessary to extend this investigation for an additional period of time.

Therefore, *it is ordered,* That the Investigative Officer shall issue a final

[1] 58 FERC ¶ 61,334, 58 FERC ¶ 61,339, 58 FERC ¶ 61,340, 58 FERC ¶ 61,341, and 58 FERC ¶ 61,367.

report of findings and recommendations to the Commission on or before July 1, 1993, such report to remain confidential unless and until the Commission rules otherwise.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-16063 Filed 7-8-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 256]

Cooperative Agreement Program to Participate in the World Health Organization's Programme of Action on Workers' Health; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds for a cooperative agreement program to participate in the World Health Organization's (WHO's) Programme of Action on Workers' Health (PAWH).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)(1)] and section 307 [42 U.S.C. 242*l*] of the Public Health Service Act, as amended.

Eligible Applicant

Assistance will be provided only to the World Health Organization, which is the only international organization providing programs of primary health care to underserved working people in developing countries of the world. In several countries, the WHO-sponsored health-care represents the only means of health protection for the working people. The WHO has unique characteristics and capabilities to meet the objectives stated by CDC. A cooperative agreement is proposed with WHO for the following reasons:

A. The project presents special opportunities for furthering research programs on occupational health through the use of unusual and unique talents, resources, populations, or environmental conditions which are not readily available in the United States (U.S.). WHO provides the U.S. with an opportunity for collaboration in many developing countries, allowing study of specific occupational diseases and injuries. No other organization can offer this opportunity so extensively. Solving the work-related problems at the country level requires finding inexpensive solutions as many countries do not have the resources available to finance prevention and control. Knowledge of low cost controls developed by other countries can be potentially adopted by small businesses in the U.S.

B. WHO has unique qualifications to perform this world-wide occupational safety and health program and no other organization can fulfill the objectives of the project.

Availability of Funds

Approximately $138,000 will be available in Fiscal Year 1992. It is expected that the award will begin on or about September 30, 1992, and will be made for 12-month budget periods within a project period of up to three years. Continuation funding will be made on the basis of satisfactory progress and the availability of funds.

Background

The Eighth General Program of Work of WHO covering the period 1990–1995, on "Workers' Health" aims at the development of occupational health services and technology throughout the world, and has specifically identified two major objectives: (1) To support the continuous evaluation, adaptation, and application of occupational health technologies and sciences; and (2) to support the health systems infrastructure and workers health care programs in controlling occupational health risks, and in protecting and promoting the health of working populations in various parts of the world.

One of the main targets of WHO is the development of national workers' health systems and to ensure that workers participate in health care programs. WHO develops training programs on leadership in workers' health for selected candidates, particularly from countries where workers' health services have not been developed, and provides follow-up after the return of these candidates to their countries.

WHO's goal of health for all by the year 2000 aims to achieve an "economically productive life" for people all over the world. Member countries are urged to pay special attention to health care delivery to working populations, particularly to medically underserved workers. Developing countries are supported in ensuring safe working conditions and effective protective measures for workers health in agriculture, mining, and industrial enterprises which already exist, or which will be set up in the process of industrialization.

The WHO Workers' Health Program calls for:

1. The transfer and use of knowledge now available that can directly be applied in developing countries.

2. The adaption of much of the knowledge in industrialized countries for use in other parts of the world, particularly including such areas as neurobehavioral health science, hazard control methods, and health-based occupational exposure limits.

3. Development of knowledge and application of ergonomics for the humanization of work, the identification and control of work-related diseases, control of adverse psychosocial factors at work, and other areas of vital importance.

4. The exploration of gaps in knowledge in many new areas of occupational health, and the development of modern educational materials for different levels of health professionals.

The National Institute for Occupational Safety and Health (NIOSH) has been the WHO Collaborating Center in Occupational Health for the United States since 1976. Since NIOSH'S designation as a WHO Collaborating Center, it has been involved in program planning, collaborative research and training, management, and direct staff interaction with WHO's Program on Workers' Health. The WHO gives occupational health a high priority, particularly in respect to developing occupational health services, legislation and institutions, training of personnel, and improvement of knowledge in the field.

Purpose

The purpose of this award is to assist WHO in establishing and expanding a Programme of Action on Workers' Health.

The proposed project has specific relevance to the mission and objectives of the CDC and has the potential to advance knowledge which will benefit the U.S. This agreement will assist

WHO in developing guidelines which can be used throughout the world in preventing work-related diseases, injuries and deaths. Through this collaboration, CDC gains the insights of occupational health experts from around the world.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Identify and review the occurrence of work-related diseases and injuries in both industrialized and developing countries; stimulate field studies of these diseases and injuries; and produce a series of guidelines on control measures.

2. Develop guidelines on the application of ergonomics in various types of industry and agriculture, both for developing and industrialized countries.

3. Develop guidelines with alternative approaches and models on the organization of occupational health services at the national level in industrialized and developing countries, emphasizing the primary health care approach and the role of health services infrastructures.

4. Coordinate research among WHO collaborating centers to cover gaps in knowledge; and develop educational material based on the scientific reviews that have been produced. Areas of particular interest are; neurotoxicity, occupational reproductive effects, lung diseases from organic and vegetable dusts, injury prevention, and occupational psychosocial factors.

5. Explore and review existing knowledge on the positive role of work in promoting health and propose areas for further study or application.

6. Develop educational materials relating to: ergonomics, safety, occupational hygiene, occupational nursing, occupational medicine, etc. Such materials should be useful in instructing undergraduate students of engineering, public health, and pre-medicine, as well as workers.

7. Develop recommendations on identification, evaluation, and control measures; health supervision and medical surveillance; personal protection and work practices; engineering controls and environmental monitoring; and health-based occupational exposure limits for hazards in the work environment.

8. Provide consultants, upon request, to WHO Collaborating Center countries to conduct various risk evaluations which would focus on identifying hazards and exposures and recommend potential engineering and procedural controls.

9. Convene international workshops on the prevention of work-related diseases and injuries.

B. CDC Activities

1. Collaborate with WHO in identifying and evaluating work-related diseases and injuries in order to define their causes and to determine possible modes of prevention.

2. Jointly sponsor with WHO international workshops on the prevention of work-related diseases and injuries.

3. Provide expert consultants to various appropriate committees of WHO.

4. Assist WHO in the development of programs on primary health care of the underserved working populations in developing countries.

5. Participate in developing internationally recommended occupational exposure limits, control technology, protective equipment, work practices, hazard-detection devices, and medical surveillance.

6. Provide scientific findings and appropriate recommendations to WHO to assist in reducing work-related diseases and injuries.

7. Assist in training and developing personnel who would be assigned to perform field work in developing countries.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

Responsiveness to the objectives of the cooperative agreement including the applicants understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (25%)

2. Feasibility of meeting the proposed goals of the cooperative agreement, including the proposed schedule for initiating and accomplishing the activities and the proposed method for evaluating the accomplishments. (35%)

3. Qualifications and experience of the staff, which will include a program director with technical expertise in the occupational health field with training and experience in the appropriate technical content areas. (20%)

4. Extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies. (20%)

5. Evaluation of the budget to the extent that it is reasonable, clearly justified and consistent with the intended use of funds. (Not scored)

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12371 Review

The application is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Application Submission and Deadline

The World Health Organization (WHO) must submit an original and two copies of application PHS Form 5161–1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., mailstop E–14, room 300, Atlanta, Georgia 30305, on or before August 12, 1992.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 256 and contact Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E–14, room 300 Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from Phil Strine, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 639–1530.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

Dated: July 2, 1992.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 92-16072 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 92P-0212]

Sour Cream Deviating from Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to The Morningstar Group to market test a product designated as "no fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to The Morningstar Group, 5956 Sherry Lane, Suite 1100, Dallas, TX 75225-6522.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The milkfat content of the product is reduced from 18 percent to 0.4 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 29.6-milliliter (2-tablespoon) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

For the purpose of this permit, the name of the product is "no fat sour cream." In accordance with FDA's current views, "no fat" food labeling is acceptable because the product contains less than 0.5 gram of fat per serving and contains no added ingredient that is a fat or an oil. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 2,599,184 kilograms (5,731,200 pounds) of the test product. The product will be manufactured at Bancroft Dairy, Inc., 1010 South Park St., Madison, WI 53715; Bancroft Dairy, Inc., 428 East Patrick St., Frederick, MD 21701; Avoset Food Corp., 605 North J St., Tulare, CA 93274; and Star Specialty Foods, Inc., 300 Industrial Dr., Sulphur Springs, TX 75482, and distributed in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the Federal Register of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "lowfat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. The test product may need to be reformulated or relabeled to comply with the relevant definition that the agency ultimately adopts.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 7, 1992.

Dated: June 29, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-16077 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0219]

Transcommerz AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Transcommerz AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and paraffin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4325) has been filed by Transcommerz AG, c/o 7300 West Camino Real, Boca Raton, FL 33433. The petition proposes to amend the food additive regulations to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and paraffin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 29, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-16076 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92M-0245]

Custom Hydrophilics; Premarket Approval of Custom 67™ (Xylofilcon A) Soft (Hydrophilic) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Custom Hydrophilics, Miami, FL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Custom 67™ (xylofilcon A) Soft (Hydrophilic) Contact Lens. The device is to be manufactured under an agreement with Igel Optics International, Bedfordshire, England, which has authorized Custom Hydrophilics to incorporate information contained in its approved premarket approval application (PMA) and related supplements for the IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 4, 1992, of the approval of the application.

DATES: Petitions for administrative review by August 10, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On June 10, 1991, Custom Hydrophilics, Miami, FL 33173, submitted to CDRH an application for premarket approval of the Custom 67™ (xylofilcon A) Soft (Hydrophilic) Contact Lens. The Custom 67™ Soft (Hydrophilic) Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Igel Optics International, Bedfordshire, England, to incorporate information contained in its approved PMA and related supplements for IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 4, 1992, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 10, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 25, 1992.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 92-16074 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of New York State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 11, 1992 at 10 a.m. in room 1434, 26 Federal Plaza, New York, New York to reconsider our decision to disapprove New York SPA 91-83.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove New York State plan amendment (SPA) number 91-83.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish

Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

On December 31, 1991, the State of New York submitted SPA 91–83, with a requested effective date of December 1, 1991. New York SPA 91–83 would provide for a one-time supplemental disproportionate share payment adjustment to State-operated and other public hospitals that provide services to any person determined to be low-income in accordance with New York State law. The State also submitted assurances and related rate information for this amendment as required by Federal regulations at 42 CFR 447.253ff.

The issue in the matter is whether New York's amendment significantly changes the standard for setting payment rates and therefore must comply with the Federal regulations at 42 CFR 447.253(f). This regulation states that the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the changes. Section 447.205 (c) and (d) set forth additional requirements regarding the content and publication of the notice.

HCFA believes that the addition of a new supplemental disproportionate share payment adjustment for State-operated and other public hospitals tied to hospital deficits and budget shortfalls, as described in the State of New York's amendment 91–83, represents a significant change in the State of New York's methods and standards for determining disproportionate share payment adjustments. Prior to this amendment neither the State's payment rates nor its disproportionate share payment adjustments were tied to hospital deficits or budget shortfalls. Therefore, the public notice requirements of 42 CFR 447.205 are applicable to this amendment.

The State contends that the public notice requirements of 42 CFR 447.205 are not applicable to this amendment because the addition of a supplemental disproportionate share payment adjustment does not represent a change in its methods and standards used to set payment rates. The State did, however, publish notice of this new supplemental disproportionate share payment adjustment in the New York State Register on December 24, 1991. However, after reviewing this December 24, 1991, notice, HCFA determined that this notice did not satisfy all the public notice requirements described in 42 CFR 447.205. Specifically, § 447.205(c)(2) requires the public notice must "give an estimate of any expected increase or decrease in the State's annual aggregate expenditures." The State's December 24, 1991, notice did not satisfy this requirement. Also, the State's requested effective date of December 1, 1991, violated the public notice requirement contained in 42 CFR 447.205(d)(1) which requires that the notice must be published before the proposed effective date of the change.

On December 12, 1991, the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102–234) was signed into law. This legislation established limits on payment adjustments to disproportionate share hospitals (DSH) for which Federal financial participation (FFP) is available. For the period January 1, 1992 through September 30, 1992, FFP is available for DSH payments only if made in accordance with the following:

(1) A State plan in effect on September 30, 1991;

(2) A SPA submitted to HCFA by September 30, 1991;

(3) A SPA submitted to HCFA between October 1, 1991, and November 26, 1991, or modification of that amendment, if the amendment limits the definition of DSHs to those hospitals with Medicaid utilization rates at or above the Statewide arithmetic mean; or

(4) A payment methodology established and in effect as of September 30, 1991, or in accordance with State law enacted or regulations adopted as of that date. Since 91–83 does not satisfy any of these situations, the State of New York's new supplemental DSH payments provided in this amendment would not be available for FFP after January 1, 1992. In this regard, HCFA could not permit the State of New York to publish a subsequent notice for this amendment to correct the December 24, 1991, deficient public notice.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Mary Jo Bane, Commissioner
New York State Department of Social Services, Ten Eyck Office Building, 40 North Pearl Street, Albany, New York 12243–0001

Dear Ms. Bane: I am responding to your request for reconsideration of the decision to disapprove New York State Plan Amendment (SPA) 91–83.

The State of New York submitted on December 31, 1991, SPA 91–83 with a requested effective date of December 1, 1991. This plan amendment would provide for a one-time supplemental disproportionate share payment adjustment to State-operated and other public hospitals that provide services to any person determined to be low-income in accordance with New York State law.

The issue in the matter is whether New York's amendment significantly changes the standard for setting payment rates and therefore must comply with the Federal regulation at 42 CFR 447.253(f). This regulation states that the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Section 447.205(c) and (d) set forth additional requirements regarding the content and publication of the notice.

I am scheduling a hearing on your request for reconsideration to be held on August 11, 1992 at 10 a.m. in room 1434, 26 Federal Plaza, New York, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,

Acting Administrator.

Authority: (Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 30, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92-16085 Filed 7-8-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-92-3439; FR-3289-N-03]

NOFA for Fair Housing Initiatives Program; Major Testing Project On Mortgage Lending Practices Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of NOFA modification and extension of time for submission of applications.

SUMMARY: On May 18, 1992, HUD published a Notice of Funding Availability (NOFA) that provides up to $1 million in funding to conduct a major testing project on mortgage lending practices under the Private Enforcement Initiative of the Fair Housing Initiatives Program (FHIP). The purpose of this Notice is to modify the NOFA and extend the time for submission of applications until August 17, 1992.

DATES: The application due date announced for July 20, 1992 is extended by this notice to August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-3214. This number also has Telecommunications Devices for the Deaf (TDD) capability for hearing or speech-impaired persons. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A FY 1992 Notice of Funding Availability (NOFA) to solicit applications that will identify specific unlawful discriminatory acts or practices that prevent and/or impede racial and national origin minorities from obtaining financing for the purchase of real property was published on May 18, 1992 (57 FR 21127). The May 18 NOFA makes up to $1 million in Private Enforcement Initiative FHIP funds available for this purpose. (On May 29, 1992, the Department published, at 57 FR 22872, a NOFA that announced HUD's FY 1992 funding of $6.9 million for the Fair Housing Initiatives Program. The May 29 NOFA announced the availability of the other $2 million of the FY 1992 $3 million total for testing activities under the Private Enforcement Initiative.)

Since the publication of the May 18 NOFA, the Department has determined that changes in the site selection, allegation parameters, and data and regulatory agency consultation requirements would be appropriate to facilitate the NOFA's goals. Applicants must now identify six potential sites for activities, three of which will be chosen by HUD in cooperation with the successful applicant. Testers are required to have the same or substantially equivalent housing needs and profile as those in the allegations of a discriminatory practice, except for the attribute which is the basis of the alleged discrimination. The mandatory aspect of the requirements for consultation with the Housing Discrimination Study and representatives from national banking regulatory agencies has been removed.

For the convenience of applicants, the specific placement of these changes in the NOFA are specified below. The intent is to modify each part of the NOFA, as necessary, to implement the changes. Several modifications may be required to implement fully a change. To the extent that this Notice and the NOFA are in conflict, this Notice takes precedence. In addition, to give potential applicants a chance to adjust to these changes, the application due date is extended to August 17, 1992.

Accordingly, the following modifications are made in FR Doc. 92-11749 to the NOFA titled, "Fair Housing Initiatives Program; Major Testing Project On Mortgage Lending Practices Competitive Solicitation", published on May 18, 1992 (57 FR 21127):

1. On page 21128, item (4) under the heading Key features of this NOFA, is revised to read: "The activities will be conducted in 3 geographic locations."

2. On page 21130, paragraph I.(d)(2)(iv), which appears in the first column is revised to read: "(iv) The extent to which the project supports the identification of six sites from which three will be selected."

3. On page 21130, the first sentence in the third paragraph under the heading, "II. Application Process", in the third column is revised to read: "No applications will be accepted after 4 p.m. on August 17, 1992. * * *"

4. On page 21130, in the third column, under the heading, "Site and Lender Selection.", found at paragraph III.(c)(1)(i), the first two sentences are revised to read: "Applicants will identify six sites, considering geographic distribution, for testing activities in the proposed workplan. HUD, in cooperation with the successful applicant(s), will select three of the sites.

* * * * *

5. On page 21131, in the third column, the sixth sentence in paragraph III.(c)(1)(ii), "Identification and Use of Existing Data to Target Lenders." is revised to read: "* * * Applicants should also consider the Housing Discrimination Study, conducted by the Urban Institute and Syracuse University (published August, 1991), and other existing data which might show where and to what extent the Department has knowledge of possible discriminatory lending practices in targeting lenders.

6. On page 21131, in the third column, in paragraph III.(c)(ii)(1), titled, "Developing the Investigative and Testing Plan.", the first and second sentences are revised to read: "Applicants should show evidence that, in developing the proposal, an attempt has been made to consult with representatives from the national banking regulatory agencies, including the Federal Reserve Board, the Comptroller of the Currency, the Office of Thrift Supervision, and FDIC, so as to strengthen the viability of the proposed methodology. The applicants must describe, if applicable, any proposed relationship with, and the roles of, the banking regulatory agencies or industry representatives (such as the American Bankers Association, Mortgage Bankers Association, etc.) in the design of this project. * * *.

Dated: July 2, 1992.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-16055 Filed 7-8-92; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-340-4333-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the

proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Washington, DC 20503, telephone 202–395–7340.

Title: Special Recreation Application and Permit Form.

OMB Approval Number: 1004–0119

Abstract: Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the Bureau of Land Management to authorize requested use and determine appropriate fees. This information will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Bureau Form Number: 8370–1.

Frequency: On occasion.

Description of Respondents: Recreation visitors to areas of the public lands, and related waters, where special recreation permits are required.

Annual Responses: 14,839.

Annual Burden Hours: 7,420.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: April 13, 1992.

Kemp Conn,

Assistant Director-Land and Renewable Resources.

[FR Doc. 92–16116 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–84–M

[CA–060–02–4333–13]

Closure of Public Lands; Kelso Creek Area of Jawbone-Butterbredt Area of Critical Environmental Concern, Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of Public Lands in the Kelso Creek area of the Jawbone-Butterbredt Area of Critical Environmental Concern, Kern County, California to vehicle use and camping.

SUMMARY: Notice is hereby given that the Bureau of Land Management is closing areas of Public Land, west of Kelso Valley Road, in the vicinity of Dove Springs Road, to all camping and all vehicle use.

ORDER: Effective June 29, 1992, those portions of the public lands in the E½ NW¼ and NE¼ SW¼ of section 15, Township 28 South, Range 35 East, Mount Diablo Meridian, Kern County, California, lying west of Kelso Valley Road, are closed to all camping and all vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any vehicle in this area.

Exemptions to this order are granted to law enforcement and other emergency vehicles in the course of official duties. All other exemptions to this order are by written authorization of the Ridgecrest Resource Area Manager only.

EFFECTIVE DATE: This closure is effective June 29, 1992 and will remain in effect until rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Area Manager, 300 South Richmond Road, Ridgecrest, California 93555, (619) 375–7125.

SUPPLEMENTARY INFORMATION: The purpose of this closure order is to provide protection to the riparian area in the upper area of Kelso Creek, as outlined in the Sikes Act Management Plan for the Jawbone-Butterbredt Area of Critical Environmental Concern, Plan (CA–06–WHA–20), approved September 27, 1982.

Maps showing the affected area are available by contacting the Ridgecrest Resource Area Office. The affected area will be posted with public notices as well as standard camping and vehicle prohibition signs.

Authority for this vehicle and camping closure is found in 43 CFR 8364.1. Violation of this order is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: June 29, 1992.

Richard E. Crowe,

Acting District Manager.

[FR Doc. 92–16115 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

[MT–070–02–4333–02 ADVB]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Thursday, July 30. The meeting will begin at 9 a.m. in the Butte District conference room, 106 N. Parkmont (Industrial Park), Butte, Montana. The agenda will include: (1) Election of officers; (2) recreation management, including an update on the Canyon Ferry partnership; (3) access and acquisition initiatives; (4) county input into district resource management planning; (5) cultural resource problems and opportunities; and (6) hazardous waste management.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: June 29, 1992.

James R. Owings,

District Manager.

[FR Doc. 92–16117 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–DN–M

[CA–060–02–4333–10]

Route Designation Update, California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to initiate an update of route designations in portions of the California Desert District of the Bureau of Land Management (BLM) and to request public comments and recommendations on the inventory of routes to be considered for designation as "open", "limited", or "closed" to motorized vehicle use. The BLM-administered lands to be addressed in this route designation update include public lands shown on the following Desert Access Guides (DAGs): Ridgecrest DAG, Red Mountain DAG, Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG, New York Mountains DAG, Palm Springs DAG, Mecca Hills portions of the Chuckwalla DAG, Imperial Valley South DAG, Salton Sea DAG, and McCain Valley DAG.

SUMMARY: Policies and procedures to be followed in the designation of motor vehicle routes for recreational and commercial access are set forth in 43 CFR parts 8341 and 8342, Executive Orders 11644 and 11989, Federal Land Policy and Management Act of 1976, National Environmental Policy Act of 1969, the California Desert Conservation

Area Plan of 1980, as amended, and the 1981 Eastern San Diego County Management Framework Plan, as amended.

The primary purpose of this notice is to request comments and recommendations from members of the public on routes to be considered in the designation process. Some, though not all, existing and previously designated routes are shown on the above-referenced Desert Access Guides published by the Bureau of Land Management. Copies of the Desert Access Guides can be purchased from any of the BLM offices Listed in this notice for $4.00 per DAG.

Additional routes that have been identified by the BLM to be considered as part of the inventory base are not shown on the published DAGs; however, they are available for review on maps maintained in the resource area office responsible for managing the affected public lands. These maps will also be on display at six (6) public meetings/open houses scheduled in August.

Members of the public are encouraged to review the DAGs and information on previously designated routes and provide written comments to the appropriate BLM office within 90 days of the publication of this notice. Comments should identify additional routes to be added to the inventory of routes considered for designation, and make recommendations on specific routes that should be "open", "limited", or "closed" to motorized vehicle use. Recommendations for additional routes and for limiting or closing all or segments of existing routes should include rationale to support the recommendation. A "limited" route is one which is limited with respect to the number of vehicles allowed, the types of vehicles allowed, the time or season of vehicle use, permitted or licensed vehicle use only, or establishment of speed limits.

A change in the status of routes which have been previously designated as "open", "closed", or "limited" will be considered only on the basis of new information, data and/or changed circumstances which were not addressed when the route was previously designated.

Following the 90-day public review period, the BLM will identify the inventory of routes to be considered in the designation process incorporating the results of public comments as well as the BLM inventory efforts.

DATES: Written public comments on the route designation update should be submitted to the Resource Area Manager responsible for the affected public lands and postmarked no later than October 7, 1992.

Public meetings have been scheduled as follows:

August 4, 1992, 7 p.m.	Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA.
August 5, 1992, 7 p.m.	Kerr-McGee Center, Red Rock Canyon/Chimney Peak Rm., 100 W. California Avenue, Ridgecrest, CA.
August 11, 1992, 7 p.m.	County Administration Center, Board of Supervisors Chambers, 940 Main Street, 2nd Floor, El Centro, CA.
August 12, 1992, 7 p.m.	Palm Springs/South Coast Resource Area Office, 63-500 Garnet Ave., No. Palm Springs, CA.
August 13, 1992, 7 p.m.	California Desert District Office, 6221 Box Springs Blvd., Riverside, CA.
August 18, 1992, 7 p.m.	Needles Resource Area Office, 101 W. Spike's Road, Needles, CA.

ADDRESSES: Comments should be sent to the following locations:

Comments concerning	Mail to	BLM contact
Ridgecrest DAG, Red Mountain DAG	Area Manager, Ridgecrest RA, Attn: Route Update, 300 So. Richmond Rd., Ridgecrest, CA 93555.	M. Phillips, (619)-375-7125.
Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG.	Area Manager, Barstow RA,. Attn: Route Update, 150 Coolwater Lane, Barstow, CA 92311.	H. Johnson, (619) 256-2729
New York Mtns. DAG	Area Manager, Needles RA, Attn: Route Update, P.O. Box 888, Needles, CA 92363.	J. Foote, (619)-326-3896.
Palm Springs DAG, Chuckwalla DAG	Area Manager, Palm Springs/South Coast RA, Attn: Route Update, P.O. Box 2000, North Palm Springs, CA 92258-2000.	D. Eslinger, (619) 251-0812.
Imperial Valley South DAG, Salton Sea DAG, McCain Valley DAG.	Area Manager, El Centro RA, Attn: Route Update, 333 So. Waterman Ave., (After 8/15/92: 1661 South 4th Street), El Centro, CA 92243.	A. Schoeck, (619) 352-5842.
Desertwise issues or process comments	District Manager, California Desert District, Attn: Route Update, 6221 Box Springs Blvd., Riverside, CA 92507-0714.	M. Brady, (714) 697-5230.

FOR FURTHER INFORMATION, CONTACT: Molly Brady, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507-0714, Telephone (714) 697-5230.

SUPPLEMENTARY INFORMATION: The objectives of route designation are as follows:

1. To avoid or minimize damage or degradation of the natural, cultural and aesthetic values of the desert.

2. To provide a reasonable motorized vehicle access network which meets the needs of desert users, including commercial users and private landowners, and other public land managing agencies in the California Desert District.

The following summarizes the route designation process:

1. *Inventory and public input.* The inventory process involves using all routes currently identified on the Desert Access Guides plus additional routes that have been designated or inventoried by the BLM which are not shown or cannot be shown because of scale on the published DAGs. The public and the BLM will have 90 days to add any routes that they think should be a part of the base inventory. Following the 90-day period, the inventory will be set and routes that are not part of the inventory will not be designated.

2. *Draft route designations.*

a. Interdisciplinary Team Recommendations. An interdisciplinary team, consisting of BLM specialists whose programs or resources are affected by the access network in the particular map area, will be formed in each resource area. The team will study the base inventory and make recommendations to the Area Manager based on 43 CFR 8342.1 route criteria and resources values of the area. All routes that are part of the inventory base will be analyzed and proposed for designation as "open", "closed", or "limited".

b. Route Analysis Documentation. The proposed route designations and supporting analysis will be documented on the following forms: Vehicle Route Designation Decision Record (CDD-100); Route Specific Environmental Assessment (CDD-101); and Decision Documentation Worksheet (CDD-102). All documentation of the route designations will be kept in a permanent case file in each resource area.

c. Environmental Assessment of Motor Vehicle Access Network. An Environmental Analysis (EA) will be

prepared on the access network of routes being evaluated in each resource area.

d. Section 7 Consultation. Where applicable, copies of route designation maps, all documentation, EA, and environmental finding will be submitted to the U.S. Fish and Wildlife Service for consultation in accordance with the 1973 Endangered Species Act as amended.

e. Public Review of the Proposed Designations and Environmental Assessment. The draft decisions, maps, EA, and environmental finding will be issued for a 45-day public review period. During this public comment period a series of public meetings/open houses will be held to allow for additional public comment.

3. *Final route designation decisions.* a. Following the end of the public comment period and return of the biological opinion from the U.S. Fish and Wildlife Service, the Area Manager will review the comments and biological opinion and develop the final route designation decisions. Only those routes designated as "open" or "limited" will be available for use.

b. The approved route designation decision record and **Federal Register** notice will be published and made available to interested members of the public. This will begin the 30-day appeal period.

4. *Annual route up-date.* Beginning in FY 1995, the route network will be updated on an annual basis in each resource area. The public will be given an opportunity to submit recommendations for changes or additions to the network of designated routes. Consideration will be given to routes overlooked in previous designations and to modifications in designations necessary to deal with current trends, demands and changing resource conditions.

Dated: July 2, 1992.

Gerald E. Hillier,

District Manager.

[FR Doc. 92-16109 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-40-M

[CO-930-2200-13; Colorado 50831]

Issuance of Conveyance Document and Opening of Land; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and opening order.

SUMMARY: This action serves to inform the public of the conveyance of 680.00 acres of public land out of Federal ownership in exchange for 270.00 acres of nonfederal land reconveyed to the United States. This notice will open all of the 270.00 acres of reconveyed lands to surface entry.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, (303) 239-3713.

EFFECTIVE DATE: July 9, 1992.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange of land between the United States and Aaron C. Woodward. The Bureau of Land Management transferred title to the following described land under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), with a reservation of all mineral deposits to the United States:

Sixth Principal Meridian, Colorado,

T. 3 S., R. 94 W.,
SE. 33, SE¼NE¼ and E½SE¼;
T. 4 S., R. 94 W.,
Sec. 26, SW¼NW¼, S½SW¼ and SW¼SE¼;
Sec. 34, E½NE¼ and NE¼SE¼;
Sec. 35, NE¼NW¼, W½W½ and NE¼SE¼;
Sec. 36, NW¼SW¼.
Containing 680.00 acres.

In exchange, the following described lands were reconveyed to the United States. No mineral rights were involved in the exchange.

Sixth Principal Meridian, Colorado,

T. 4 S., R. 94 W.,
Sec. 33, E½SW¼SE¼ and SE¼SE¼;
Sec. 34, NE¼NE¼SW¼, S½N½SW¼, S½SW¼ and W½SE¼.
Containing 270.00 acres.

3. At 10 a.m. on August 12, 1992, the E½SW¼SE¼ and SE¼SE¼ of section 33 and the NE¼NE¼SW¼, S½N½SW¼, S½SW¼ and W½SE¼ of section 34, T. 4 S., R. 94 W., Sixth Principal Meridian, Colorado, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 12, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public lands and acquisition of nonfederal land by the Federal Government.

This exchange enabled the Bureau of Land Management to obtain lands needed for legal access to the Naval Oil Shale Reserve. The exchange was based on equal values of the properties exchanged, with cash equalization by the exchange proponent. The public interest was well served by the completion of the exchange.

Dated: June 12, 1992

Robert S. Schmidt,

Chief Branch of Realty Programs.

[FR Doc. 92-16110 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-14 COC-51325]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public land, Boulder County, Colorado.

SUMMARY: The following described land has been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value of $15,200.00: Sixth Principal Meridian, Colorado. T. 1 N., R. 71W, Sec. 19, Lot 93, containing 3.15 acres. The land is not needed for any federal purpose and is identified for disposal in the land use plan. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is being offered by direct sale to Wayne Ritter. All minerals will be reserved to the United States. The patent, when issued, will contain certain other reservations. Detailed information concerning these reservations as well as specific conditions of the sale are available upon request.

ADDRESSES: Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, CO 81215-2200.

DATES: On or before August 24, 1992. Interested parties may submit comments to the District Manager, Canon City District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at (303) 239-3719.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-16121 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-02-4212-14; N-51812]

ACTION: Notice of Realty Action, advertisement of public land to be sold by the Bureau of Land Management

(BLM) by direct sale authority to the Wilkinson Ranches, Inc., P.O. Box 74, McDermitt, NV 89421.

SUMMARY: Notice of hereby given that pursuant to the Act of October 21, 1976 (43 U.S.C. 1713; Section 203), the BLM will sell a parcel of public land at fair market value to Wilkinson Ranches, Inc.

The following describes the public land to be disposed of:

Mount Diablo Meridian, Nevada

T. 48 N., R. 38 E., Sec. 34, Lot 5
56.41 acres

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Officer, c/o Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445, Phone: (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public land is being offered for sale to the Wilkinson Ranches, Inc., by the BLM in order to facilitate the efficient use and operation of private land owned by the private party. The parcel of public land is bordered on all sides by private land.

This sale action by the BLM is in accord with land use plans, programs, policy and guidelines developed by the Department of the Interior, BLM.

Both surface and subsurface (mineral) estates would be disposed of.

Publication of this notice in the **Federal Register** shall segregate the public land to the extent that the land would not be subject to appropriation under the public land laws including the mining laws. Any subsequent application will not be considered as filed and would be returned to the applicant. The segregative effect of this Notice of Realty Action shall terminate upon issuance of the patent or transfer document for the land described above or upon publication of a notice in the **Federal Register** of a termination of the segregation or 270 days from the date of the publication of this notice, whichever occurs first.

RESERVATIONS TO THE UNITED STATES GOVERNMENT: The patent, when issued, will contain the following:

1. Rights-of-way for ditches and canals constructed under the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comment to the District Manager, Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, NV 89445.

In the absence of comment or objection to the Bureau's action, this Notice of Realty Action will become the final determination of the Department of the Interior, BLM.

Dated: June 29, 1992.

Robert Neary,

Acting District Manager.

[FR Doc. 92–16120 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–HC–M

Proposal to Use Helicopters in the Roundup of Wild Horses on the Pryor Mountain Wild Horse Range

AGENCY: Bureau of Land Management, Miles City District, Interior.

ACTION: Notice of intent to hold public hearing to consider use of helicopters in the roundup and management of wild horses on the Pryor Mountain Wild Horse Range.

SUMMARY: The 1984 Billings Resource Management Plan nor the 1984 Herd Area Management Plan for the Pryor Mountain Wild Horse Range allowed the use of helicopters for the roundup of wild horses. The Herd Area Management Plan will be revised and the Billings Resource Management Plan will be amended to allow the use of helicopters if the proposal is accepted. The 1992 Pryor Mountain capture plan did not discuss the use of helicopters, but it will be updated to include the helicopter as an approved method of roundup on the Pryor Mountain Wild Horse Range.

DATES: The public hearing will be held at 1 p.m. on Tuesday, August 18, 1992 at the National Park Service Big Horn Canyon Visitors Center, Highway 14A, in Lovell, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Jaynes of the Bureau of Land Management, Billings Resource Area, 810 East Main, Billings, Montana 59105 or at (406) 657–6262.

SUPPLEMENTARY INFORMATION: The public hearing will be announced in the "Lovell Chronicle" and the "Billings Gazette".

Arnold E. Dougan,

Acting Associate District Manager.

[FR Doc. 92–16073 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–DN–M

[CA–940–5410–10–BO30; CACA 30163]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, containing 114 acres, are segregated and made unavailable for filings under the United States mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2841, Sacramento, CA 95825, (916) 978–4820.

Serial No.—CACA 30163

T. 12 S., R. 3 W., San Bernardino Meridian,
Sec. 32, Fractional E½.

County—San Diego

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the United States mining laws. The segregation effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated. June 29, 1992.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 92–16112 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–40–M

[NM–930–4214–11; NMNM 023844]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of a withdrawal of the Pine Flat Recreation Area (formerly Pine Flat Experimental Area) continue for an

additional 20 years. The land will remain closed to mining and will be opened to surface entry. The land has been and will remain open to mineral leasing.

DATES: Comments should be received by October 7, 1992.

ADDRESSES: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502–7115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal of land made by Public Land Order 1663 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1988). The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Pine Flat Recreation Area (formerly Pine Flat Experimental Area)

T. 9 N., R. 6 E.,
Sec. 7, lot 7;
Sec. 18, NE ¼.

The area described contains 205.42 acres in Torrance County

The withdrawal is essential for protection of substantial capital improvements on this site. The withdrawal currently segregates the land from surface entry and mining but not from mineral leasing. The Forest Service requests that the lands remain closed to mining, but that they be opened to the operation of the public land laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 30, 1992.

Monte G. Joedan,

Associate State Director.

[FR Doc. 92–16014 Filed 7–8–92; 8:45 am]

BILLING CODE 4310-FB

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Kearney's Blue-Star for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kearney's blue-star (*Amsonia kearneyana* Woodson) which the Service listed as an endangered species on January 19, 1989. The plant, Kearney's blue-star occurs in the Baboquivari Mountains, Pima County, Arizona. There are two known populations. A natural population occurs on the Tohono O'odham Indian Reservation and an introduced population occurs on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 8, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Please phone Susan Rutman, U.S. Fish and Wildlife Service, Botanist; at telephone 602/379–4720 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Kearney's blue-star is an endangered species consisting of only two wild populations. The total number of plants in both populations total 110 plants. Low numbers, few populations, catastrophic flooding, soil erosion accelerated by losses in plant cover and vigor due to livestock grazing, apparent insufficient reproduction, and seed predation by insects are principal threats to the continued existence and recovery of the Kearney's blue-star.

The Kearney's blue-star recovery plan has been reviewed by the appropriate Service staff in region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1992.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 92–16106 Filed 7–8–92; 8:45 am]

BILLING CODE 4310-55-M

Availability of Draft Recovery Plan for Pecos Bluntnose Shiner for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Pecos bluntnose shiner (*Notropis simus simus*) which the Service listed as a threatened species in 1987. This fish occurs in the Pecos River, DeBaca, Chaves, and Eddy counties, in southeastern New Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 8, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, P.O. Box 370, Dexter, New Mexico 88230.

Written comments and materials regarding the plans should be addressed to the project leader at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Brooks, Fish and Wildlife Service, Office of Fishery and Wildlife Management Assistance, Project Leader; telephone 505/734-5226 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery for species listed unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Pecos bluntnose shiner is threatened with extinction throughout its range. Once abundant in the Pecos River from Santa Rosa to Carlsbad, New Mexico, the range and numbers of fish present have decreased dramatically. The loss of permanent water flows and degradation of riverine habitat are major threats to the species survival. Other factors such as predation by and competition with various introduced species of fish may be adversely impacting this species also.

The Pecos bluntnose shiner recovery plan has been reviewed extensively. The plan will be issued as final incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the Pecos bluntnose shiner recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1992.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 92-16105 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Federal Geographic Data Committee; Public Meeting on the National Spatial Data Infrastructure

AGENCY: Geological Survey, DOI.

ACTION: Notice of meeting.

SUMMARY: The Coordination Group of the Federal Geographic Data Committee will conduct a public meeting to discuss approaches to building the Nation's digital geographic (spatial) data infrastructure. A major goal of Office of Management and Budget Circular A-16, which established the Federal Geographic Data Committee, is the development of a national digital spatial information resource, with the involvement of Federal, State, and local governments, and the private sector. This national information resource, linked by criteria and standards, will enable efficient transfer of spatial data between producers and users.

The committee will use the information gathered at the meeting in developing its longer term strategy for the infrastructure and liaison with the non-Federal community. The views of the public, particularly those interested in the production, use, and sharing of geographic data, are requested.

DATES: August 3, 1992, 1:30 p.m. to 5 p.m.

ADDRESSES: Ballroom, Ramada Renaissance Techworld, 999 Ninth Street, NW., Washington, DC. The meeting will be held concurrently with the American Society of Photogrammetry and Romote Sensing's Convention of Mapping and Monitoring Global Change.

FOR FURTHER INFORMATION CONTACT: For further information or to submit views concerning the topic to be addressed at the meeting, contact either Jeff Booth, U.S. Environmental Protection Agency, 401 M Street, SW. (3405R), Washington, DC 20460; telephone (703) 557-3088; telefax (703) 557-3186; or Michael Domaratz, U.S. Geological Survey, 590 National Center, Reston, Virginia 22092; telephone (703) 648-4533; telefax (703) 648-5755.

SUPPLEMENTARY INFORMATION: Admittance of the public will be limited to the seating available. Persons planning to attend the meeting should contact Judith Wildman at (703) 648-4150 prior to August 1. Background materials for the meeting are available by contacting Ms. Wildman.

Dated: June 15, 1992.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 92-16113 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Statue of Liberty National Monument Ellis Islands, New York, NY

Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

In accordance with section 102(c) of the National Environmental Policy Act

of 1969, and pursuant to the Report of the Senate Committee on the Department of Transportation and Related Agencies Appropriation Bill, 1992, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) concerning the establishment of a bridge to Ellis Island, Statute of Liberty National Monument, New York from Liberty State Park, Jersey City, New Jersey as a means of providing alternate access to the island. A no-action/no build alternative will be analyzed along with alternatives including rehabilitation of the existing temporary/construction bridge, developing a new bridge, tunnel or other mode of access with an array of equipment options to shuttle visitors and provide emergency service and analysis of administrative changes to enhance access.

The NPS will hold public meetings as indicated below for the purpose of soliciting both written and verbal comments concerning the scope of alternatives and impacts to be analyzed. The NPS expects to be evaluating impacts on topics such as: Visitor services, cultural resource preservation, park land protection and/or enhancement, water, air, and sound quality, vehicular traffic, unrestricted or open water navigation, and local socio-economic effects.

Public input will help expand and/or confirm these topics for impact analysis. Meetings will be held as follows:

Tuesday, July 21, 1992, 2 p.m.

Interpretive Center, Freedom Way, Liberty State Park, Jersey City, New Jersey

Thursday, July 30, 1992, 2 p.m.

Federal Hall National Memorial, 26 Wall Street, New York, New York

The public response period for written comments on this phase of NEPA compliance work will close September 1, 1992, after which a synthesis of public comments will be prepared and made available. Anticipating extensive interest and concern in this undertaking, a draft Environmental Impact Statement (EIS) is expected to be ready for public and interagency review in the Fall of 1993, commensurate with the progress of other related compliance requirements pertaining to such laws as the National Historic Preservation Act of 1966. Integral with or following these compliance responsibilities of the NPS will be the compliance work of the regulatory agencies such as the US Coast Guard for navigational safety, the US Army Corps of Engineers for water quality and structural placement, and various New York and New Jersey state agencies.

The responsible official for the EIS is Marie Rust, Acting Regional Director, North Atlantic Region, National Park Service. Written comments and suggestions concerning the range of alternatives and related impacts to be evaluated in the EIS must be submitted to Michael Alderstein, Chief, Office of Urban Projects, National Park Service, 26 Wall Street, New York, New York, 10005, by September 1, 1992.

Dated: June 29, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-16028 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meetings of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 14, 1992, 1 p.m. to 5 p.m.

ADDRESSES: City Hall, City of Ramsey, 15153 Nowthen Boulevard, Ramsey, Minnesota.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, suite 418, St. Paul, Minnesota 55101, (612) 290-4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100-696, November 18, 1988.

Dated: June 12, 1992.

Edward D. Carlin,

Acting Regional Director, Midwest Region.

[FR Doc. 92-16029 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-70-M

Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that a meeting of the National Park System Advisory Board will be held on August 10 and 11, 1992 at the Many Glacier Hotel, Glacier National Park, Montana. The general business meeting will start at 8 a.m., Monday, August 10, continuing until about 5 p.m. The Board will reconvene at about 8 a.m. the next morning and conclude its meeting by about noon on Tuesday, August 11. The meeting will follow orientation tours and briefings in Glacier National Park and the adjoining Waterton Lakes National Park in Alberta, Canada.

Potential National Historic Landmarks will be discussed during the morning of August 10, along with the Service's studies of the Dutch Harbor Naval Operating Base, Alaska as a potential addition to the National Park System and the Coronado Expedition trail route (AZ, NM, TX, OK and KS) as a potential addition to the National Trails System. Activities relating to the Service's upcoming American Labor History theme study will also be discussed.

Scheduled for discussion during the afternoon of August 10 are Board recommendations regarding National Heritage Corridors, the Service's current concepts for a national system of American Heritage Landscapes/Areas, and the transition of the Presidio of San Francisco to administration by the National Park Service. Other discussion topics will include the Columbus Quincentennial, the Board's participation in the Service's new area study program, and the structuring of Board committees.

Topics for the morning of August 11 will include future activities of the Board's Natural Areas Committee and interim reports on Board activities relating to the Outdoor Recreation Initiative of the Secretary of the Interior, urban park issues, and the education potential of the parks.

The Board will be addressed at various times by officials of the Department of the Interior and the National Park Service, and other miscellaneous topics and reports will be covered. We reserve the right to change the order of the agenda if necessary to accommodate travel schedules, or for other reasons.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. David L. Jervis, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–208–4030). More specific information on potential National Historic Landmarks may be obtained from Senior Historian Benjamin Levy (History Division, telephone 202–343–8164) at the same P.O. box address.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 1220, Main Interior Building, 1849 C Street NW., Washington, DC.

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 92–16030 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32103]

Milford-Bennington Railroad Co., Inc.—Trackage Rights Exemption—Boston and Maine Corp. and Springfield Terminal Railway Co.; Exemption

Boston and Maine Corporation and Springfield Terminal Railway Company have agreed to grant 5.36 miles of overhead trackage rights between Wilton (milepost N–16.36) and Milford, NH (milepost N–11.0) to Milford-Bennington Railroad Company, Inc. (MBR).

The trackage rights will permit MBR to move high volumes of stone and gravel from facilities at Wilton to a processing plant at Milford. MBR intends to consummate the trackage rights agreement 7 days from the filing date of this notice or on July 1, 1992.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

The verified notice was filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the effectiveness of the exemption. Pleadings must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, 1920 N Street NW.—#420, Washington, DC 20036.

Dated: July 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–16086 Filed 7–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for individual manufacturing quota for a basic class of controlled substance.

(2) Form 189. Drug Enforcement Administration.

(3) Annually.

(4) Businesses or other for-profit. Form 189 is required to be completed by applicants who desire to manufacture Schedules I and II Controlled Substances. The information is used by DEA to calculate the individual manufacturing quotas for U.S. companies involved in the manufacture of controlled substances.

(5) 85 annual responses at .5 hours per response.

(6) 43 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: July 2, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–16068 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Consent Decree Pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., In United States v. Cardi Corp.

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Cardi Corporation*, Civil Action No. 91–0101T, was lodged, together with an amended complaint, in the United States District Court for the District of Rhode Island on July 2, 1992. The amended complaint alleges that the defendants, Cardi Corporation and Cardi Materials Corporation, violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, at an asphalt plant located in Warwick, Rhode Island, by failing to conduct emissions testing and to comply with emissions limits set forth in the New Source Performance Standard for Hot Mix Asphalt Plants, 40 CFR part 60, subpart I. The amended complaint also alleges that Cardi Corporation violated the Clean Air Act by failing to comply with an administrative order issued pursuant to that Act by the United States Environmental Protection Agency. The proposed Decree, if entered, will resolve the liability of the defendants for these alleged violations. The proposed Decree would require the defendants to pay a civil penalty and to implement an

operations and maintenance program to ensure compliance with the Clean Air Act at the Warwick plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cardi Corporation*, Department of Justice No. 90–5–2–1–1393.

The proposed Decree may be examined at the office of the United States Attorney, Westminster Square Building, 10 Dorrance Street, Providence, Rhode Island, 02903; at the Region I office of the United States Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–16126 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 22, 1992, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc.*, Civil Action No. 89–C–165, was lodged with the United States District Court for Colorado. The action was brought under sections 301(a) and 309(b) and (d), of the Clean Water Act, 33 U.S.C. 1311(a) and 1319(b) and (d), for Eagle-Picher's violations of industrial wastewater pretreatment regulations, 40 CFR 403 and 461, at its battery manufacturing plant located in Security, Colorado.

The proposed consent decree requires the defendant to pay civil penalties in the amount of $150,000.00. In addition, the consent decree requires the defendant to maintain future compliance with all applicable industrial wastewater pretreatment regulations and requirements of the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc.*, DOJ Ref. No. 90–5–1–1–3288.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Roger Olegg,

Acting Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 92–16015 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment in Action To Enjoin Violations of the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *United Air Lines, Inc.*, No. 92–2405 FMS, was lodged with the United States District Court for the Northern District of California on June 24, 1992.

The consent decree requires payment of a $234,500 penalty by defendant for violations of the Clean Air Act. The consent decree also provides that defendant will commit to measures necessary to achieve compliance with Clean Air Act and the violatile organic compound emission limit in the California State Implementation Plan.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *United Air Lines, Inc., DOJ Ref. No. 90–5–2–1–1449.*

The consent decree may be examined at the Office of the United States Attorney, District of California, 450 Golden Gate Avenue, San Francisco, California 36055; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097 Washington, DC 20004, Tel. (202) 347–2072. A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please tender a check in the amount of $3.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–16016 Filed 7–8–92; 8:45 a.m.]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Advanced Television Test Center, Inc./ Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Television Test Center, Inc. ("Test Center") and Cable Television Laboratories, Inc. ("CableLabs") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of extending the protections of Section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 2, 1989, Test Center and CableLabs filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 8, 1989 (54 FR 46997). On February 20, 1991, and February 18, 1992, CableLabs and Test Center filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on April 10, 1991 (56 FR 14542), and April 15, 1992 (57 FR 13121), respectively.

Pursuant to Section 6(b) of the Act, the identities of the additional members of CableLabs are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige

Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the coordination of testing efforts to facilitate the development of data that the FCC and its Advisory Committee on Advanced Television Service, as well as the Advanced Television Systems Committee, will require and utilize to determine appropriate actions with regard to the introduction of advanced television service in the United States. The parties may also undertake additional ATV tests not required by the Advisory Committee on Advanced Television Service.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-16122 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc. and General Instrument Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and General Instrument Corporation through its Jerrold Communications Division ("GI") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1990, CableLabs and GI filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 1, 1990 (55 FR 46111). On February 20, 1991, and February 18, 1992, CableLabs and GI filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on April 10, 1991 (56 FR 14542), and April 15, 1992 (57 FR 13122), respectively.

Pursuant to section 6(b) of the Act, the identities of the additional members of CableLabs are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the conduct of National Television System Committee (NTSC) visual degradation tests to evaluate the subjective effects of typical impairments and other conditions on NTSC television pictures generated in cable television systems.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-16127 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./General Instrument Corporation/Scientific-Atlanta, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), General Instrument Corporation ("GI") and Scientific-Atlanta, Inc. ("S-A") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 21, 1991, CableLabs, GI and S-A filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 1991 (56 FR 36847). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13122).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the education of the cable industry and the public concerning the availability of, and potential for, digital video transmission and compression technologies in the distribution and delivery of cable television programming. The parties also plan to cooperate in demonstrations of: (a) The distribution of compressed, digitally-transmitted NTSC signals to cable television systems and (b) the delivery and telecast of advanced television (ATV) programming by the cable industry. These demonstrations will be coordinated by CableLabs using high definition television (HDTV) and other ATV proponent television systems that wish to participate.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-16128 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc./PCN America, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and PCN America, Inc. ("PCN America") on May 18, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protection of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 25, 1991, CableLabs and PCN America filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 14, 1991 (56 FR 27539). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13122).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information relating to the functions and architecture of personal communications networks, and cooperation in the conduct of radio

frequency tests in connection with experimental personal communications network licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-16129 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International Inc./Public Broadcasting Service

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Tele-Communications, Inc. ("TCI"), Viacom International Inc. ("Viacom") and Public Broadcasting Service ("PBS") on May 18, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On November 27, 1991, CableLabs, TCI, Viacom and PBS filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 3, 1992 (57 FR 4061). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13120).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the participation and coordination with each other in a Request For Proposals ("RFP") for development of one or more Digital Compression Delivery System(s) that will enable cable television program suppliers to provide multiple programs per satellite transponder channel to cable television system headends and customers. The parties intend to evaluate the responses to the RFP and may independently award contract(s) to develop the System(s).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-16130 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 Diversey Corp. Phosphoric Acid Joint Venture

Notice is hereby given that, on June 12, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* "("the Act"), Diversey Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of three parties to the Phosphoric Acid Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diversey Corporation advised that Chemland, Inc., Turlock, California, Mason Chemical Co., Chicago, Illinois; and The Procter and Gamble Co., Cincinnati, Ohio have become parties to the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this Joint Venture remains open, and the members intend to file additional written notification disclosing all changes in membership.

On April 26, 1991, Diversey Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 20, 1991 (56 FR 23089).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-16017 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on June 2, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990, January 17, 1991, March 1, 1991, July 30, 1991, November 12, 1991, February 11, 1992, March 13, 1992, and May 21, 1992.

The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), August 29, 1991 (56 FR 42757), January 15, 1992 (57 FR 1760), March 24, 1992 (57 FR 10190), and June 30, 1992 (57 FR 29100), respectively. A **Federal Register** notice has not yet been published for the MCC notification filed on May 21, 1992. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

VLSI Technology, located in San Jose, California, has become an Associate Member of MCC and a participant in the Single/Few Chip Packaging Project within MCC's Packaging/Interconnect Technology Program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-16131 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Southwest Research Institute

Notice is hereby given that, on May 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Southwest Research Institute

("SwRI") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission of a project entitled "Characterization of Annular Flow in the Presence of Mechanical Aids and Washouts in Full-Scale Horizontal Wellbores." The notifications disclose (1) the identities of the parties to the project and (2) the nature and objectives of the research to be performed in accordance with the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below.

The current parties to this project, identified by this notice, are: Chevron Oil Field Research Company, LaHabra, CA; Halliburton Services, a division of Halliburton Company, Duncan, OK; Mobile Research and Development Corporation, Dallas, TX; Schlumberger Cambridge Research Limited, Cambridge, England; and Texas, Inc., Bellaire, TX.

The purpose of the project is to investigate and document the behavior of commercially available mechanical aids during the primary cementing operations when the annulus contains a washout section. The primary objectives of the research and development program will be to evaluate the ability of selected mechanical aids to alter the flow patterns within an annular washout for Newtonian and non-Newtonian fluids and to provide fundamental data on the flow patterns for Newtonian and non-Newtonian fluid flow in an annular washout section. The major tasks to this project are: (1) To modify the existing annular flow loop and facility; (2) to perform tests using water and analyze the results; (3) to perform tests using a non-Newtonian slurry and analyze the results; and (4) to report the results to participants.

Membership in this project remains open, and the parties intend to file additional written notifications disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Southwest Research Institute, 6220 Culebra Road, San Antonio, Texas 78228–0510.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92–16019 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984—Fabric Softener Quats Steering Committee and Joint Venture

Notice is hereby given that, on June 15, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Sherex Chemical Company, Inc. has filed written supplemental notifications for the Fabric Softener Quats Steering Committee and Joint Venture simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically the Joint Venture advised that Stepan Company, Northfield, IL, has become a party to the Joint Venture and Capital City Products Company, Janesville, WI, has withdrawn from the Joint Venture.

No other changes have been made in either the membership or planned activities of the Joint Venture.

On July 25, 1988, the Fabric Softener Quats Steering Committee and Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 19, 1988 (53 FR 31772).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–16018 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984—Unix International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on May 5, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 Fed. Reg. 8608). On May 4, 1989, August 1, 1989, October 31, 1989, January 31, 1990, May 1, 1990, July 30, 1990, November 13, 1990, February 6, 1991, May 17, 1991, August 12, 1991, November 5, 1991, and February 5, 1992, UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), December 28, 1990 (55 FR 53368), March 15, 1991 (56 FR 11273), June 20, 1991 (56 FR 28417), September 12, 1991 (56 FR 46445), December 17, 1991 (56 FR 65509), and April 16, 1992 (57 FR 13382), respectively.

As of April 28, 1992, the following have become members of UNIX International, Inc.: Lehman Brothers, New York, NY; Legent Corporation, Vienna, VA; Softmark Australia, North Sydney, AUSTRALIA NSW; NIIT Ltd., New Delhi, INDIA; Union Bank of Switzerland, Bahnhofstrasse, SWITZERLAND; Novell, Inc., San Jose, CA; and Univel, San Jose, CA.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–16020 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984; West Agro, Incorporated—Iodophors Joint Venture

Notice is hereby given that, on June 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), West Agro, Incorporated—Iodophors Joint Venture ("Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that BioSentry, Inc., Stone Mountain, GA, has become a member of the Joint Venture. In addition, GAF Chemicals has changed its corporate name to Rhone-Poulenc Surfactants.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture.

On December 15, 1987, the Iodophors Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988, (53 FR 1074), as corrected by 53 FR 4232.

On May 24, 1988, December 13, 1988, January 18, 1989, and November 2, 1989, the Joint Venture filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 13, 1988 (53 FR 22059), January 12, 1989 (54 FR 1256), February 21, 1989 (54 FR 1490), and January 19, 1990 (55 FR 1882), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–16021 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Ethanol Joint Venture

Notice is hereby given that, on June 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Zep Manufacturing Co. filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Ethanol Joint Venture ("Joint Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The change consists of the addition of the following parties to the Ethanol Joint Venture: Midwest Dental Products Corporation, Des Plaines, IL and Palermo Sales Company, Inc., West Bethesda, MD.

No other changes have been made in either the membership, corporate names or planned activities of the Joint Venture.

On May 30, 1990, the Ethanol Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 ((55 FR 27700). On April 16, 1991, the Ethanol Joint Venture filed an additional notification. The Department of Justice published a notice in the **Federal Register** in response to this additional notification on June 20, 1991 (56 FR 28415).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–16132 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 10, 1992, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I.
Amphetamine (1100)	II.
Phenylacetone (8501)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 10, 1992.

Dated: June 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–16140 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated March 5, 1992, and published in the **Federal Register** on March 16, 1992 (57FR9139), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II.
Codeine (9050)	II.
Diprenorphine (9058)	II.
Etorphine Hydrochloride (9059)	II.
Dihydrocodeine (9120)	II.
Oxycodone (9143)	II.
Hydromorphone (9150)	II.
Diphenoxylate (9170)	II.
Hydrocodone (9193)	II.
Levorphanol (9220)	II.
Meperidine (9230)	II.
Methadone (9250)	II.
Methadone-intermediate (9254)	II.
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II.
Morphine (9300)	II.
Thebaine (9333)	II.
Opium extracts (9610)	II.
Opium fluid extract (9620)	II.
Opium tincture (9630)	II.
Opium, powdered (9639)	II.
Opium, granulated (9640)	II.
Oxymorphone (9652)	II.
Alfentanil (9737)	II.
Sufentanil (9740)	II.
Fentanyl (9801)	II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–16141 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 25, 1992, Sigma Chemical Company, 3500 DeKalb Street,

St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl 1-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperdine (7470).	I
Etorphine (except HCl) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Beta-hydroxyfentanyl (9830)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 10, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–16142 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will conduct site visits in Los Angeles, California on Thursday, July 23, 1992. For exact times and locations of site visits, please contact the Commission two days prior to the event at 202–690–6462.

The purpose of the site visits is to inform the Commission about programs and approaches that work to strengthen America's urban families and, as each setting allows, enable participants to express their views on this topic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW. room 305–F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92–15936 Filed 7–8–92; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure

Date and Time: July 27, 1992; 8:30 am to 5 pm

Place: Room 416, National Science Foundation, 1800 G Street, NW, Washington, DC 20550

Type of Meeting: Closed

Contact Person: Mr. Daniel Vanbelleghem, NSFNET Program, National Science Foundation, room 416, Washington, DC 20550 (202 357-9717)

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSFNET Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-16102 Filed 7-8-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to the requirement of 10 CFR 50.71(e) to periodically submit to the NRC an update to the Final Safety Analysis Report (FSAR). This exemption would be granted to the Yankee Atomic Electric Company (Yankee or the licensee) for the Yankee Nuclear Power Station (YNPS or plant) located in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to periodically update the FSAR. The licensee requested this exemption in their letter of June 19, 1992. This exemption is the proposed action being considered by the NRC.

The Need for the Proposed Action

The licensee's letter of June 19, 1992, stated that the plant has permanently ceased power operation and that all nuclear fuel has been removed from the containment to the spent fuel pool and therefore the requirements of 10 CFR 50.71(e) are no longer applicable to YNPS.

Environmental Impacts of the Proposed Action

The proposed exemption does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the exemption. This would not reduce environmental impacts of the facility and would not enhance the protection of the environment nor public health and safety. However, it would result in a significant waste of licensee resources that could be better applied to an orderly decommissioning of the facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated June 19, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 2nd day of July 1992.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-16134 Filed 7-8-92; 8:45 am]

BILLING CODE 7590-01-M

DOE-NRC Meeting to Discuss the Status of DOE Plans Relating to the Classification and Disposal of the Hanford Tank Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Members of the Nuclear Regulatory Commission (NRC) staff will attend the Department of Energy (DOE) meeting to discuss the status of DOE's plans relating to the classification and disposal of the Hanford double-shell tank wastes.

DATES: July 16, 1992.

ADDRESSES: Tower Inn, 1515 George Washington Way, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Chad J. Glenn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504-2546.

SUPPLEMENTARY INFORMATION: The DOE issued a Final Environmental Impact Statement (FEIS) entitled Disposal of Hanford Defense High-Level Transuranic and Tank Wastes in December 1987. Subsequent to the publication of the FEIS, NRC, DOE and other interested parties met on several occasions to exchange information on approaches for classifying and disposing of the Handord double-shell tanks. In March 1989, DOE submitted a proposal to NRC utilizing an overall material balance of tank waste at the Hanford site to demonstrate that the largest practical amount of total site activity attributable to "first-cycle solvent extraction" wastes would be segregated, with the residual activity after such segregation being disposed in the form of grout in concrete vaults. In September 1989, NRC agreed that the criteria used by DOE for classifying the grout feeds as low-level waste were appropriate.

This meeting will provide an opportunity for NRC and other interested parties to be briefed on the status of DOE's plans for processing and disposal of the Hanford tank wastes.

Dated at Rockville, Maryland, this 2nd day of July 1992.

For the Nuclear Regulatory Commission.

Timothy C. Johnson,

Acting Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 92-16135 Filed 7-8-92; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hear testimony in Chicago on July 13th, 14th, & 15th. Presentations will be made by advocacy groups, Women's Army Corps, Women's Veterans Association, military service members and civilians on policies pertaining to the Assignment of Women in the Military. Additionally, each of the Commission's four Fact Finding Panels will meet to discuss women in the Armed Forces.

Dates: Monday & Tuesday, July 13th & 14th, 8 a.m. to 6 p.m., Fact Finding Panels Meetings (Rooms to be announced), Northwestern University, Rebecca Crown Center, Hardin Hall, 633 Clark Street, Evanston, Illinois 60208, Wednesday, July 15th, 8 a.m. to 1 p.m.,

Northwestern University, Rebecca Crown Center, Hardin Hall, 633 Clark Street, Evanston, Illinois 60208.

Note: In addition to the Chicago hearing, The Presidential Commission on the Assignment of Women in the Armed Forces has scheduled the following regional hearings: Los Angeles, August 6, 7, & 8. Dallas, August 27, 28, & 29.

Status: Open to Public.

Contact: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin K. Kirk, (202) 376–6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Public Law 102–190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W.S. Orr,

Staff Director.

[FR Doc. 92–16090 Filed 7–8–92; 8:45 am]

BILLING CODE 6820-CD-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30872; File No. SR–AMEX–92–15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Guidelines for Equity Specialists Regarding Their Use of Options to Hedge Positions in Their Specialty Stocks

June 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 18, 1992, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175" ("Guidelines") to provide greater flexibility to equity specialists when hedging their specialty stock positions with listed options.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1985, the SEC approved amendments to AMEX Rule 175 to permit an equity specialist to use listed options overlying his specialty stock to offset or "hedge" the risk of making a market in his specialty stock. Under these amendments, any option transaction effected pursuant to AMEX Rule 175 must be made in compliance with the Guidelines, which provide, among other things, that stock positions may only be hedged in conformity with specified "hedge ratios." Since approval of these amendments in 1985, only one equity specialist has utilized the "hedging" provisions contained in the Guidelines. The AMEX suggests that this lack of options use by equity specialists is a result of rigidity in "hedge ratios," stringent position liquidation requirements and the absence of a rollover provision for established options positions. In addition, the AMEX notes that an equity specialist is required to continuously monitor his options positions relative to his specialty stock position in order to maintain compliance with the Guidelines.

The AMEX accordingly proposes that the Guidelines be amended to permit equity specialists to utilize either the current fixed "hedge ratios," the proposed "dynamic deltas," or the "long-term option strategy" to establish offsetting options positions on their specialty stocks. Except for options positions effected pursuant to the "long-term option strategy" described below, all opening option transactions established pursuant to the Guidelines would be subject to the following three conditions:

(i) The net option position (which may include a combination of both puts and calls) must be on the opposite side of the market from the underlying specialty stock position;

(ii) The option position must be established solely to offset the risk of making a market in the specialty stock; and

(iii) The net option position must not exceed the equivalent number of shares of the specialty stock position that the specialist is offsetting, based on: (a) dynamic deltas,[1] (b) fixed hedge ratios,[2] or (c) any other hedging strategy approved by the Exchange.

Notwithstanding the above requirements, a specialist would be permitted to utilize a calendar rollover [3] provision when he wishes to replace a near-term option series with a more distant term option series with the result that the specialist would become temporarily "over-hedged." In such a situation, the specialist would be permitted to enter an order to acquire the more distant term option position before liquidating the near-term option position, provided that he enters an order to liquidate his previous position by the close of trading on the exchange(s) where the option is traded on the day *after* the new position is acquired.

(a) Calculation of Option Positions to Offset Existing Stock Positions

When a specialist's closing position in an underlying specialty stock changes by more than 25% from that which existed when an offsetting option position was established and causes the specialist's *net* option position to exceed the specialty stock position by the equivalent of more than 5,000 shares (*e.g.*, 50 in-the-money option contracts or 50 option contracts with a delta of 1.0) the specialist must enter liquidation order(s) so that his *net* option position no longer exceeds that permitted by the

[1] "Dynamic deltas" represent the ratio of price movement in the option to price movement in the stock. The number of option contracts permitted to offset each 100 shares of stock maybe calculated as follows: (number of shares/100)/delta value. Delta values may range from 0 to 1, and will be calculated by the Exchange on the basis of its pricing model.

[2] The applicable fixed hedge ratios (number of option contracts permitted to offset each 100 shares of stock) are as follows: (a) 1 to 1 (for in-the-money options); (b) 1.5 to 1 (for at-the-money options); and (c) 2 to 1 (for out-of-money options).

[3] A calendar rollover is a method whereby a market participant with an options position that is about to expire replaces it with a position in a farther out series.

hedging convention used. Such orders must be entered by the close of trading on the exchange(s) where the option is traded on the *next* trading day after the day the hedge becomes excessive relative to the stock position.

When the specialist has liquidated an "excess" option position, he shall be deemed to have established a new offsetting stock/option position, and any subsequent changes in his stock position will be figured from that point. If, while liquidation orders are being worked, the specialist's stock position changes such that it is again within 25% of the establishing position, the unexecuted balance of the liquidation order may be cancelled.

When a specialist's position in an underlying specialty stock becomes flat *or* on the same side of the market as the specialist's *net* option position and his same side net option position is equivalent to a stock position of more than 5,000 shares, the specialist must enter liquidation orders so that his *net* option position is no longer on the same side of the market as his stock position. Such orders must be entered by the close of trading on the exchange(s) where the option is traded on the *same* trading day that the options and stock positions became on the same side of the market.

If, while liquidation orders are being worked, the specialist's stock position changes such that it is no longer on the same side of the market as the *net* option position, the unexecuted balance of the liquidation order may be cancelled.

(b) Long-Term Option Strategy

As noted above, a specialist may pursue a long-term strategy to offset marketmaking risk and not be subject to the requirements for establishing or liquidating option positions, provided the specialist meets the following four conditions:

(i) The specialist must obtain approval from the Exchange for a long-term option strategy before effecting any option transaction;

(ii) The option position when established must consist of out-of-the-money options which are not near-term;

(iii) The specialist may not establish or have established any other option position in the same specialty stock, other than pursuant to the long-term strategy; and

(iv) The long-term option strategy must provide a reasonable offset of the specialist's dealer risk in the specialty stock regardless of day-to-day fluctuations in his dealer stock position.

(2) Basis

The AMEX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to perfect the mechanism of a free and open market and promote just and equitable principles of trade. The Exchange further states that the revisions to the Guidelines are consistent with the objectives of Section 6(b) in that they are expected to facilitate the ability of a specialist to provide liquidity to the market by affording the specialist a reasonable means of offsetting the risk of assuming dealer positions in his specialty stock.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16056 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30873; File No. SR-AMEX-92-13]

Self-Regulatory Organization; Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Position and Exercise Limits for the Institutional Index Option and Settling the Index Based on the Opening Prices of Its Component Securities

June 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1992,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items, I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The AMEX has filed proposed rule changes relating to position and exercise limits for its Institutional Index Option ("XII" or "Index") and the settlement method for expiring XII contracts. Specifically, these changes include: (1) Basing the settlement value of expiring XII contracts on the opening prices of component securities instead of their closing prices; (2) increasing position and exercise limits and expanding permissible hedge exemptions from such limits; and (3) providing the Exchange

[1] The AMEX originally filed the proposed rule change with the Commission on May 12, 1992. The AMEX, however, was required to amend its proposal. The Commission subsequently received the amendment on June 4, 1992. This notice incorporates these amendments.

with the ability to grant exemptions from position limits to member organizations facilitating customer orders.

The text of the proposed rule changes are available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

(1) Morning Settlement

Currently, expiration settlement for options on the Standard & Poor's ("S&P") MidCap Index [2] is based on the opening prices of the Index's component stocks while XII Options settle based on the closing prices of their respective component stocks. Since the October 1987 Market Break, there has been considerable discussion concerning index option settlement policies. Recently, the Chicago Board Options Exchange, Inc. ("CBOE") filed a proposal with the Commission to move its S&P 500 Index ("SPX") Option to morning settlement.[3] SPX and XII are fairly comparable indexes in that they measure a similar part of the broad U.S. stock market and their index values are fairly close to each other. In addition, options on both indexes are used predominantly by professional trading firms, institutional investors and other floor professionals. Accordingly, the AMEX has proposed to move the XII Option to morning settlement.

(2) Position and Exercise Limits

Existing Exchange rules provide for XII position and exercise limits of 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts held in series with the nearest expiration month, the so-called "telescoping provision." The AMEX proposes to increase XII position and exercise limits to 45,000 contracts on the same side of the market and eliminate the "telescoping" requirement that options positions be reduced in the nearest term month.

As noted above, options on the XII are traded primarily by institutional and professional investors as well as member firms, all of whom have a need to hedge a large quantity of assets. These users utilize XII options, among other instruments, to help hedge those assets. However, existing XII position limits are viewed to be overly restrictive, causing Exchange officials to assert that users of XII and similar products have started to utilize less restrictive futures contracts and over-the-counter ("OTC") derivatives in order to meet their hedging needs. The AMEX believes that increasing the position limits for XII Options to 45,000 contracts will increase the institutional use of this product which, in turn, will benefit not only the beneficiaries of assets managed by these institutions but also the market as a whole through increased liquidity. Moreover, the elimination of the "telescoping" provision will further enhance liquidity by removing the requirement that XII Options positions be immediately reduced to 15,000 contracts prior to entering the near-term month.

These proposed changes are intended to result in little or no attendant risk to the marketplace since the XII is composed of 75 of the most widely-held stocks in institutional portfolios that have a market value of more than $100 million in investment funds.[4] Thus, the component issues are extremely liquid and the overall index less volatile than individual stocks. In addition, XII Options are European-style, which means they can only be exercised at expiration.

(3) Hedge Exemption

In 1988, the Commission approved Exchange proposals designed to enable public customers with qualified portfolios of stock to better hedge those holdings with index options by permitting a "hedge exemption" for up 75,000 contracts in excess of existing index option position limits.[5] The AMEX now proposes to expand the types of options positions eligible for a hedge exemption from XII position limits and increase the size of the permissible hedge exemptions to 150,000 contracts on the same side of the market. Four of the proposed positions which will be eligible for the exemption are the most commonly used hedge positions which were approved by the Commission for equity option hedge exemptions. For ease of administration, Exchange approval for the proposed hedge exemptions may be granted orally, followed by the submission to the AMEX of the appropriate documentation substantiating the basis for the exemption. The Exchange will continue to review and monitor each application to determine eligibility.

(4) Facilitation Exemption

The AMEX currently has the authority to grant exemptions from index option position and exercise limits to specialists and options traders in order to facilitate their transactions. The Exchange now proposes to have similar authority to grant member organizations exemptions from position limits when they are taking positions that do not exceed 100,000 contracts on the same side of the market to facilitate customer orders. With expanded position limits and the ability of member organizations to facilitate customer orders, institutions and other large investors will now be better able to utilize XII options as a hedging vehicle. The ability to exempt member organizations in this fashion will better serve the needs of the investing public and result in the distribution of risk in connection with large customer transactions. In addition, the Exchange proposes to establish safeguards to insure that these transactions are adequately documented. Lastly, it is important to note that this exemption will be unavailable for index arbitrage transactions and that any position exempted from position limits pursuant to this authority must be hedged within five business days.

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that they are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule changes will not impose a burden on competition.

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[2] See Securities Exchange Act Release No. 30290 (January 27, 1992), 57 FR 4072.

[3] See Securities Exchange Act Release No. 30673 (May 6, 1992), 57 FR 20539

[4] To qualify for inclusion in the XII, stocks must be held by a minimum of 200 of the reporting institutions filing Section 13(f) reports and must have traded at least 7 million shares in each of the two preceding calendar quarters.

[5] *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange's Options Committee, a committee composed of member firm and floor professionals voted in support of these changes on April 16, 1992. In addition, the Exchange has received a comment letter from Kidder, Peabody & Co., dated April 23, 1992 requesting relief from existing XII position limits.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16067 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30863; File No. SR-DTC-92-01]

Self-Regulatory Organizations; The Depository Trust Company; Filing of Amendment Number One to Proposed Rule Change Relating to DTC Eligibility of Commercial Paper

June 26, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") an amendment to a proposed rule change relating to the eligibility of Commercial Paper ("CP") in DTC's Same-Day-Funds Settlement ("SDFS") service that revises DTC's existing Procedures applicable to CP Issuing Paying Agents ("IPA").[1] The amendment would add a new section to DTC's SDFS Procedures, entitled "IPA Failure to Settle: DTC Notification of CP Issuers." The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment Number One

DTC's amendment to the commercial paper proposal will add new procedures that will provide for timely issuer notification by DTC of an IPA failure to settle on matured CP.

1. Under SDFS failure-to-settle procedures, if on the business day following the failure of an SDFS Participant to settle its net debit obligation to DTC, the Participant is still unable to settle, DTC could eliminate the net debit by reselling to the deliveries securities whose receipt for value by the failing Participant had resulted in its net settlement obligation to DTC. If the failing Participant were an IPA of a CP issuer, it is possible that under DTC's SDFS procedures, matured CP could be resold to the DTC Participants that had presented (*i.e.*, delivered) it to the failing IPA for payment the previous day.

2. DTC will notify CP issuers if their IPA has failed to settle, as follows:

a. If by not later than 12 noon (all times are Eastern Time) on the DTC business day following the settlement day for which an IPA has failed to settle, the IPA has not yet settled with DTC, DTC will begin to contact each issuer of DTC-eligible CP identified on DTC's files with that IPA via facsimile transmission.

b. The facsimile transmission notice will advise the issuer that its IPA has failed to settle and invite any issuer desiring information concerning the impact of the failure-to-settle on the presentment of its matured paper to contract DTC at special telephone number(s) beginning at 4 p.m. that day.

c. Beginning at 4 p.m., DTC will respond to telephone inquiries from each issuer contacted earlier, with information on the aggregate dollar amount of maturity presentments of its CP for which the IPA failure to pay DTC. DTC will arrange also to send to issuers (via facsimile, mail, or physical pick up at DTC) detailed information on each CP maturity transaction not settled, including the identity of the DTC Participant to which the matured CP was resold.

3. For DTC to establish a complete file of contact information for CP issuers, each IPA will be required to provide DTC with the following information concerning each CP issuer for which it acts. This information will be provided at the time the issuer's CP program is sought to be made DTC-eligible.

a. The name and telephone number and facsimile transmission number of a senior official in the treasurer's office of the issuer and,

b. A backup contact name and telephone number. Periodically, the IPA will be asked to confirm the accuracy of information previously provided.

II. Date of Effectiveness of Amendment Number One and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule as amended, or

[1] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (June 15, 1992). The proposal amends File No. SR-DTC-92-01, Securities Exchange Act Release No. 30410 (February 25, 1992), 57 FR 7826 (notice of proposal to make permanent DTC CP program in its SDFS service). For a more extensive description of this program, see Securities Exchange Act Release Nos. 28515 (October 3, 1990), 55 FR 41401, 28518 (October 5, 1990), 55 FR 42114 (orders temporarily approving DTC's CP program in its SDFS service), and 29604 (August 23, 1992), 56 FR 43408 (order modifying the formula by which DTC calculates adjustable net debit caps). See, also, Securities Exchange Act Release No. 30649 (April 29, 1992), 57 FR 19319 (order temporarily extending DTC's CP program in its SDFS service until July 31, 1992).

(B) Institute proceedings to determine whether the proposed rule change as amended should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to this amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-92-01 and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16143 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30882; File No. SR-NASD-92-28]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Improvements in the NASD Code of Arbitration Procedure

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The NASD is proposing to amend section 12 of the NASD Code of Arbitration Procedure ("Code") and article III, section 21 of the Rules of Fair Practice to improve the efficiency of its arbitration process. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

Part III Uniform Code of Arbitration

* * * * *

Required Submission

Sec. 12. (a), (b) and (c) unchanged.

(d) Class Action claims.

(1) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Association.

(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Association if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with section 12(a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with section 13 of section 19 of the code, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.

(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (A) The class certification is denied; (B) the class is decertified; (C) the customer is excluded from the class by the court; or (D) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is a party except to the extent stated in this paragraph.

* * * * *

Rules of Fair Practice

* * * * *

Article III

* * * * *

Books and Records

Sec. 21.

(a) through (e) unchanged.

Requirements When Using Predispute Arbitration Agreements With Customers

(f)(1) through (4) unchanged.

(5) The requirements of [this subsection] *subparagraphs (f) (1 through (4)* shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7) The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after [insert date one year after the date of SEC approval].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

The proposed rule change was previously added to the Uniform Code of Arbitration by the Securities Industry Conference on Arbitration (SICA). In general, the proposed rule change is intended to exclude class action matters from arbitration proceedings conducted by the NASD and to require that predispute arbitration agreements contain a notice that class action matters may not be arbitrated.

This proposed rule change developed from a suggestion made to all self-regulatory organizations (SROs) in a letter dated July 13, 1988, from the Chairman of the Securities and Exchange Commission, David S. Ruder. Chairman Ruder asked the SROs to consider adopting procedures that would give investors access to the courts in appropriate cases, including class actions. The NASD's National Arbitration Committee, after considering Ruder's request, decided not to propose a rule change at that time in light of the broad discretion that the Code gives arbitrators and the Director of Arbitration to defer certain arbitration proceedings to the remedies provided by applicable law. SICA determined separately, however, that it would be preferable for each SRO to clarify in its rules the treatment of class actions and, since 1990, SICA has been developing such rules for the Uniform Code.

On January 7, 1992, SICA unanimously adopted a final version of these rules. The SICA language has been modified to conform to the NASD's Code provisions and, with minor technical changes, has been submitted as the rule change proposed herein.

(1) *Exclusion of Class Action Matters from Arbitration:* The proposed amendment to section 12 of the Code adds a new subsection (d). Proposed Subsection (d)(1) provides that claims filed in arbitration as class actions are not eligible for submission under the Code. Proposed Subsection (d)(2) provides that claims filed by members of a putative or certified class action (hereinafter referred to jointly as "class action") which was filed in another forum are also ineligible for submission if the claim is encompassed by the class action. Disputes over whether the claim is encompassed by a class action would be referred to a panel of one or three arbitrators or may be decided by the court with jurisdiction over the class action.

Proposed Subsection (d)(3) provides that no member or associated person shall move to compel arbitration against a customer who is a member of a class action unless: (1) Class certification is denied; (2) the class is decertified; (3) the customer is excluded from the class; or (4) the customer elects not to participate or has complied with court-imposed conditions, if any, for withdrawing from the class. Proposed Subsection (d)(4) provides that members and associated persons do not waive their rights under the Code or any agreement to arbitrate, except to the extent stated in the proposed new subsection (d).

(2) *Content of Predispute Arbitration Agreements:* The NASD is also proposing to amend Article III, Section 21(f) of the Rules of Fair Practice to incorporate the provisions of the proposed new Subsection 12(d) of the Code into the rule governing the content of predispute arbitration agreements with customers. The proposed amendment to Section 21(f) would not be effective until one year after the date of Commission approval, in order to give members sufficient time to redraft and reprint their arbitration agreements.

(3) *Implementation* The NASD has requested that the proposed rule change become effective upon the date of Commission approval for all open arbitrations and for arbitration filings made on or after that date, except that the change to Article III, Section 21 of the Rules of Fair Practice will take effect one year after the date of Commission approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.[1] In pertinent part, section 15A(b)(6) of the Act requires the Association's rules to protect investors and the public interest. The proposed rule change meets the requirements of section 15A(b)(6) of the Act by facilitating the arbitration process and the resolution of customer claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[1] 15 U.S.C. 78o.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed change should be disapproved.

The NASD consents to an extension of the time periods specified above until 35 days after the NASD has filed an amendment that provides the result of the request for member vote on the proposed rule change to article III, section 21 of the rules of fair practice in a notice to members to be published in July 1992.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16058 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30883; File No. SR-NSCC-92-5]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Limiting the Use of Letters of Credit To Collateralize Clearing Fund Contributions

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 23, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-92-5) as described below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through June 30, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change [2] modifies the amount of an NSCC member's Clearing Fund deposit that may be collateralized by letters of credit. The proposal increases the minimum cash contribution for those members who use letters of credit and sets a limit on the amount of a member's required Clearing Fund contribution that may be collateralized with letters of credit.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989 (File No. SR-NSCC-89-16) and was approved temporarily through December 31, 1990. Subsequently, the Commission granted a number of extensions to the temporary approval period to allow the Commission to review and assess the use of letters of credit as Clearing Fund collateral. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297; Securities Exchange Act Release No. 28727 (December 31, 1990), 56 FR 716, and Securities Exchange Act Release No. 29389 (June 28, 1991), 56 FR 30953.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) NSCC is seeking approval of a proposed rule change that modifies the amount of a member's Clearing Fund Required Deposit that may be collateralized by letters of credit. Specifically, the proposed rule change would increase the minimum cash contribution for those members who use letters of credit from $50,000 to the greater of $50,000 or 10% of their Clearing Fund Required Deposit up to a maximum of $1,000,000. In addition, the rule change would provide that only 70% of a member's Required Deposit may be collateralized with letters of credit. The rule change would also make certain nonsubstantive drafting changes such as adding headings to the Clearing Fund formula section for purposes of clarity. The effect of the proposed rule change would be to increase the liquidity of the Clearing Fund and limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

Since obtaining temporary approval of the original filing, NSCC has filed Clearing Fund composition reports with the Commission. NSCC states that since December 31, 1989, as a result of the new requirements, it has observed the following concerning the composition of the Clearing Fund:

1. Cash deposits have increased by approximately 132%;

2. The value of securities deposited has increased by approximately 148%;

3. Letter of credit deposits have declined by approximately 45%; and

4. The total value of cash and securities now on deposit has increased by approximately 139%.

(b) Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and to protect the public interest, it is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No new written comments have been solicited or received.[3] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes good cause exists for approving the proposal because it is consistent with sections 17A(b)(3)(A) and (F) of the Act.[4] Section 17A(b)(3)(A) requires that a clearing agency be able to "safeguard securities and funds in its custody or control or for which it is responsible." Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to "protect investors and the public interest."

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's unsecured promise to pay funds upon presentation of stipulated documents, clearing agencies may be exposed to risk in the event of issuer default or insolvency. Furthermore, because the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, the clearing agency may have to await payment or to seek alternative short-term financing pending the issuer's payment. This waiting period could hinder NSCC's ability to meet its payment obligations on a timely basis.

As indicated above, since the proposal first received temporary approval, NSCC has experienced a 139% increase in the deposit of cash and securities deposited as Clearing Fund contributions. Because cash and

[3] In a previous filing of this proposal, NSCC received a letter from Wedbush Morgan Securities, Inc. that opposed the proposal because it believed it would increase its cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[4] 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

securities are more liquid than letters of credit, the enhanced level of such deposits helps to ensure the liquidity of the Clearing Fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing the risk associated with the use of letters of credit, the proposal is consistent with NSCC's responsibilities under the Act to safeguard securities or funds in its custody or control and to protect investors and the public in general. Although NSCC's proposal is a positive step toward addressing the Commission's concern regarding the use of letters of credit to meet guarantee fund requirements, further analysis by the Commission staff on the issue of the optimal level of collateralization of the Clearing Fund Required Deposit with letters of credit is required. Therefore, the Commission will temporarily approve the proposal through June 30, 1993.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving because accelerated approval of the proposal will keep effective NSCC's rules that help reduce the exposure of NSCC's Clearing Fund to potential liquidity risks associated with using letters of credit to collateralize members' Clearing Fund contributions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–92–5 and should be submitted within July 30, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with section 17A of the Act.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–92–5) be, and hereby is, approved on a temporary basis through June 30, 1993.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–16059 Filed 7–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30885; File No. SR–NASD–92–26]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Interim Extension of the OTC Bulletin Board Service through October 1, 1992

July 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change

On June 1, 1990, the NASD initiated operation in the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on June 30, 1992.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through October 1, 1992. During this interval, there will be no material change in the Bulletin Board's operational features.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing this rule change to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month of May 1992, the Service reflected 10,878 market making positions based on 275 NASD member firms displaying quotations/indications of interest in 4,069 unlisted securities.[3]

During the proposed extension, foreign securities and American Depository Shares (collectively, "foreign/ADS issues") will remain subject to the twice-daily, update limitation in the Commission's original approval order of the OTCBB Service's operation.[4] As a result, all priced bids/

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[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 30531 (March 30, 1992), 57 FR 11625.

[3] These are average daily figures calculated for the entire month.

[4] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

offers displayed in the Service for foreign/ADS issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on section 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act as the statutory basis for the instant rule change. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD submits that extension of the Service through October 1, 1992 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD does not believe any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on the Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service.

The NASD further believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,100 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Section 2 of Schedule H to NASD By-Laws.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customer orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a three month period, inclusive of October 1, 1992.

For the Commission, by the Division of Market regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–16144 Filed 7–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25569]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 2, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 27, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by

certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power & Light Co. (70–7834)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

By order dated March 20, 1991 (HCAR No. 25278) ("Order"), the Commission, among other things, authorized AP&L, for the period during which any shares of the new preferred stock [1] are outstanding to: (1) Redeem shares of its outstanding New Preferred Stock to be issued under the exemptive provisions of Rule 52, in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance; (2) redeem, (or purchase in lieu of redemption), outstanding New Preferred Stock, in accordance with the sinking fund provisions established at the time of the New Preferred Stock's initial issuance. These redemption provisions applied to the New Preferred Stock that was issued through August 31, 1992.

AP&L now intends to issue $35 million of New Preferred Stock, through December 31, 1992, under the exemptive provisions of Rule 52 ("Remaining Stock"). For the period during which any shares of the Remaining Stock are outstanding, AP&L proposes to: (1) redeem shares of its Remaining Stock, in accordance with any mandatory or optional redemption provisions established at the time of the Remaining Stock's initial issuance; and (2) redeem, (or purchase in lieu of redemption), outstanding Remaining Stock, in accordance with the sinking fund provisions established at the time of the Remaining Stock's initial issuance.

In addition, AP&L was further authorized by the Order to acquire from time-to-time in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (1) $350 million aggregate principal amount of one or more series of AP&L's first mortgage bonds ("First Mortgage Bonds"); (2) $175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's preferred stock. AP&L has acquired $21.45 million of the First Mortgage Bonds leaving a balance of $328.55 million of First Mortgage Bonds to be acquired.

AP&L now proposes to extend its authorization, from August 31, 1992 to December 31, 1993 to acquire: (1) $328.55 million aggregate principal amount of First Mortgage Bonds; (2) $175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's preferred stock.

Central and South West Corp. (70–7918)

Central and South West Corporation ("CSW"), a registered holding company, and three of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub"), each located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and its nonutility subsidiaries, ARK/CSW Development Partnership (the "Joint Venture"), Polk Power GP, Inc. ("JV Sub"), Polk Power Partners, L.P. ("Partnership"), each located at 23293 South Pointe Drive, Laguna Hills, California 92653, have filed a post-effective amendment under Sections 6(a), 7, 12(b), and 13(b) of the Act and Rules 45, 50(a)(5), 51, 86, 87, 90 and 91 thereunder to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45, 50(a)(5) and 51 thereunder.

By prior order dated February 18, 1992 (HCAR No. 25477) ("February Order"), CSW, Energy, Energy Sub and the Joint Venture were authorized to invest in a 122.2 megawatt, gas-fired cogeneration facility (the "Project") located near Bartow in Polk County, Florida. Once operational, the Project would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978. Under the February Order, CSW, Energy, Energy Sub and the Joint Venture were also authorized to organize the Partnership, a Delaware limited partnership, to own and operate the Project and organize JV Sub to be the sole general partner of the Partnership. JV Sub is a wholly owned subsidiary of the Joint Venture, a Delaware general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. JV Sub, a Delaware corporation, has a 1% interest in the Partnership. The two limited partners are Energy Sub and ARK. They each hold a 49.5% interest in the Partnership. Further, the February Order, among other things, authorized Energy Sub to make capital contributions to the Partnership of up to $9 million and authorized the Partnership to borrow approximately $120 million for use in constructing and developing the Project. The February Order also authorized the Partnership and/or the partners to provide some assurance for the $18 million equity of the Project in the form of an equity support agreement or letter of credit ("Equity LOC").

CSW, Energy, Energy Sub and the Joint Venture now propose to make additional capital contributions in the amount of $4.5 million downstream to the Partnership that would be above the $9 million in capital contributions authorized under the February Order. The result of the additional capital contributions will be that Energy Sub and Ark would have each contributed $13.5 million to the Partnership. The Partnership also proposes to increase the amount to be borrowed from third party lenders for use in constructing and developing the Project ("Construction Financing") from approximately $120 million to $135 million. It is presently anticipated that the terms of the Construction Financing would increase from 15 to 20 years. The Partnership requests an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof for the Construction Financing. In addition, CSW proposes to provide an equity support agreement or letter of credit in an amount not to exceed $13.5 million, in order to secure Energy Sub's obligation to make capital contributions to the Partnership. Any letter of credit would bear terms no less favorable to CSW than the terms of the Equity LOC under the February Order.

The Partnership further proposes to enter into a construction agreement ("Construction Agreement") with Energy or Energy Sub for the purpose of developing and constructing the Project. The Construction Agreement would be at terms not limited to cost, as permitted under rule 90(d). It is expected that Energy or Energy Sub would provide general construction management and oversight services and would subcontract with other nonassociate

[1] The new preferred stock will consist of: (1) AP&L's Cumulative Preferred Stock, par value $.01; (2) up to four million shares of AP&L's Cumulative Preferred Stock, par value $25; and/or (3) up to one million shares of AP&L's Cumulative Preferred Stock, par value $100 ("New Preferred Stock").

construction and engineering firms and equipment vendors to provide the design, construction and engineering services and Project equipment. It is anticipated that approximately 80% of the value of the Construction Agreement will be provided by nonassociates under subcontracts. The remaining services will be provided by Energy, Energy Sub or Central and South West Services, Inc. ("CSWS"), a wholly owned subsidiary of CSW. All expenses for services subcontracted to or performed by CSWS will be at cost. It is represented that there will be no adverse affect on the availability of CSWS personnel or services to any operating company in CSW's holding company system, as a result of CSWS's participation. Energy and Energy Sub state that they intend to provide such construction services exclusively as an ancillary activity to their authorized development and ownership activities, not as a continuous or independent line of business. They assert that construction services are not an independent source of revenue for Energy or Energy Sub.

The Construction Agreement will also contain certain warranties and performance and completion guarantees that may create potential liability for Energy in the event that such warranties or guarantees are not satisfied or waived. The maximum potential liability under the Construction Agreement is $82,550,000. In connection with the Construction Financing, CSW may be required by the lenders to support Energy's liability under the Construction Agreement through an indemnity, a cash deposit, a letter of credit or other similar arrangement ("Support Arrangement"). The Support Arrangement would be at terms no less favorable than the terms of the Equity LOC under the February Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16145 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25572; (International Series Release No. 410]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 7, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 22, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Duke Power Company, et al.

(70-8030)

("Duke"), 422 South Church Street, Charlotte, North Carolina 28242, a North Carolina public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, and Duke Guemes, Inc. ("Duke Guemes"), 422 South Church Street, Charlotte, North Carolina 28242, its wholly owned indirect nonutility subsidiary company, have filed an application under section 3(b) of the Act and, in the alternative, sections 9(a)(2) and 10, in connection with a proposed indirect acquisition of an Argentine public-utility company subsidiary.

Duke is engaged in the generation, transmission, distribution and sale of electric energy in the central portion of North Carolina and the western portion of South Carolina. Duke's sole public-utility subsidiary company, Nantahala Power & Light Co., operates eleven hydroelectric stations in North Carolina.

Central Termica Guemes S.A. ("Guemes"), a government-owned Argentina company, owns the Guemes Power Station which is comprised of three gas-fired units with a total capacity of 245 MW. As part of its privatization program, the Argentine government is seeking bidders for up to a 60% voting equity interest in Guemes.[1] Duke will seek to acquire up to a 30% voting equity interest in Guemes through Powerco S.A. ("Powerco"), a partially owned Argentine subsidiary company of Duke Guemes that will be formed to hold the acquired shares of Guemes.[2] Duke also intends to form an indirect Argentine subsidiary company, Powerco Services, Inc. ("Powerco Services"), to manage and operate the Guemes Power Station.[3]

The exact ownership interests and investments to be made by the participants in Powerco have not yet been determined.[4] The application states, however, that Duke and its affiliate companies will not invest more than $50 million in Powerco, inclusive of any guarantees or other financial commitments that may be provided, as well as certain construction obligations.[5]

Duke and its subsidiary companies will provide Powerco Services with a limited number of personnel and sufficient technical expertise to carry out its obligations as manager and operator of the Power Station. The personnel will be employed by Powerco Services, which will pay commercially reasonable, market-based fees for the technical expertise. Duke asserts that there will be no business transactions or financial commitments between Guemes and Duke or any of its subsidiary companies, apart from those described herein.

The applicants anticipate that Duke's proportionate share of the initial annual gross utility revenues of Guemes will not exceed $33 million. On a continuing basis, the annual gross utility revenues of Duke's proportionate share of Guemes, together with the operating revenues that Powerco Services will receive, and not expected to exceed 5% of the gross revenues of Duke.

As a result of the proposed transactions, Guemes and Powerco Services will be public-utility subsidiary companies of Duke within the meaning

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[1] The Argentine government will retain 30% of the voting securities of Guemes, and 10% of the securities will be retained for the employees of Guemes under an employee stock ownership plan.

[2] Duke contemplates forming Powerco, alone or together with one or more foreign investors, to own the 60% interest in Guemes. In the event Powerco is not formed, Duke Guemes will hold the interest in Guemes directly. All references to Powerco in the application are intended to include any entity in lieu of Powerco that may be created to acquire and hold the equity securities of Guemes.

[3] Duke may make available to investors up to a 50% interest in Powerco Services.

[4] The applicants anticipate an ownership interest of 30% to 50% in Powerco. Foreign investors will hold the remaining 50% to 70% interest.

[5] Powerco will be obligated, if it acquires the interest in Guemes, to complete a partially constructed 135-kilometer transmission line connecting Guemes to the National Network of Transmission. Upon completion, the line will be owned by the Argentine government.

of section 2(a)(8) of the Act. The applicants request an unqualified order under section 3(b) of the Act exempting Powerco Services and Guemes from all provisions of the Act. The applicants state that neither Powerco Services nor Guemes will derive any material part of its income, directly or indirectly, from sources within the United States. Further, neither Powerco Services nor Guemes will be, nor have any subsidiary company which will be, a public-utility company operating in the United States.

The application states that, if unqualified exemptions under section 3(b) are granted, the subsidiary companies of Duke which are parent entities of Guemes and Powerco Services will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and Duke and its subsidiary companies will rely upon rule 11(b)(1) to provide an exemption from the approval requirements of section 9(a)(2) and 10 to which they would otherwise be subject.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-16228 Filed 7-7-92; 12:21 pm]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before August 10, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: Cleo Verbillis, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Candidate for Appointment to SBA Advisory Councils and Nominee for State Small Business Person of the Year.

SBA Form No.: SBA Form 899.

Frequency: On occasion.

Description of Respondents: Individuals, seeking appointment to SBA Advisory Councils.

Annual Responses: 700.

Annual Burden: 93.

Dated: June 30, 1992.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 92-16035 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2662]

New Mexico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 18, 1992, I find that Lea County, New Mexico constitutes a disaster area as a result of damages cause by severe thunderstorms, hail and flooding May 22-25, 1992. Applications for loans for physical damage may be filed until the close of business on August 17, 1992, and for loans for economic injury until the close of business on March 18, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, Texas 76155.

or other local announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Eddy, Chaves, and Roosevelt in the State of New Mexico, and Andrews, Cochran, Gaines, Living, Winkler, and Yoakum Counties in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damages:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 256206 and for economic injury the numbers are 764000 for New Mexico and 764100 for Texas:

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 23, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR. Doc. 92 16094 Filed 7-9-; 8:45 am]

BILLING CODE 8925-01-M

[Declaration of Economic Injury Disaster Loan Area #7638]

Pennsylvania; Declaration of Disaster Loan Area

Bucks County and the contiguous counties of Lehigh, Montgomery, Northampton and Philadelphia, in the State of Pennsylvania, and Burlington, Hunterdon, Mercer and Warren Counties in the State of New Jersey constitute an economic injury disaster area as a result of damages caused by a fire at the Four Seasons Mall in New Hope Borough, Pennsylvania, which occurred on June 9, 1992. Eligible small business without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on March 22, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of New Jersey is 7639.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: June 22, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-16095 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by PL 97–35) and the SBA share of immediate participation loans is 8½ percent for the fiscal quarter beginning July 1, 1992.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July–September quarter of FY 92, this rate will be 7½ percent.

Dated: June 30, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92–16036 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

[License # 02/02–0457]

License Surrender; Ferranti High Technology, Inc.

Notice is hereby given that Ferranti High Technology, Inc. ("FHT"), 501 Madison Avenue, New York, New York 10022, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CCA was licensed by the Small Business Administration on May 31, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 8, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–16096 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

[License # 04/04–5162]

First American Lending Corp.; License Surrender

Notice is hereby given that First American Lending Corporation. ("FALC"), P.O. Box 24660, W. Palm Beach, FL, 33416, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FALC was licensed by the Small Business Administration on September 27, 1979.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 22, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–16098 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

[License # 09/09–0324]

Latigo Capital Partners I; License Surrender

Notice is hereby given that Latigo Capital Partners I ("LCPI"), 701 Rancho Circle, Las Vegas, NV, 89913, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). LCPI was licensed by the Small Business Administered on September 20, 1985.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 14, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–16097 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

[License #03/04–0107]

Metropolitan Capital Corp.; License Surrender

Notice is hereby given that METROPOLITAN CAPITAL CORPORATION ("MCC"), 2550 Huntington Ave., Alexandria, VA 22303 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FALC was licensed by the Small Business Administration on February 2, 1970.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 27, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–16037 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0293]

Neptune Capital Corp.; Surrender of License

Notice is hereby given that Neptune Capital Corporation, 5956 Sherry Lane, suite 800, Dallas, TX 75225 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Neptune Capital Corporation was licensed by the Small Business Administration on December 23, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 24, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 22, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–16093 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

Rocky Mountain Equity Corp.; License Surrender

[License No. 09/09–0289]

Notice is hereby given that Rocky Mountain Corporation, 2525 East Camelback, suite 275, Phoenix, Arizona, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Rocky Mountain Corporation was licensed by the Small Business Administration on September 22, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on June 22,

1992 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 22, 1992

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-16092 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

Seafirst Capital Corp.; License Surrender

[License #10/10/0186]

Notice is hereby given that Seafirst Capital Corporation ("SCC"), 701 Fifth Ave., Seattle, WA, 98124, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1985, as amended ("the Act"). SCC was licensed by the Small Business Administration on June 19, 1980.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 14, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-16099 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 11:30 a.m. on Friday, August 21, 1992, at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370-2306.

Dated: July 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-16038 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.00 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usuary ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: June 24, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-16039 Filed 7-82-92; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collections under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collections proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, Tn 37402-2801; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Survey of Attitudes About Use and Management of TVA Lands Open to the Public.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, farms.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 3400.

Estimated Total Annual Burden Hours: 510.

Estimated Average Burden Hours Per Response: .15.

Need For and Use of Information: This survey of residents of counties adjoining TVA lakes and users of TVA lands open to the public will help define public expectations regarding TVA land management. TVA will use the information in formulating effective land policies and their implementation for the next five to ten years.

Type of Request: Regular submission.

Title of Information Collection: Survey of Attitudes Toward Forest Practices and Policies.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, farms.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1600.

Estimated Total Annual Burden Hours: 320.

Estimated Average Burden Hours Per Response: .2.

Need For and Use of Information: This survey of residents of the Tennessee valley region and Alabama will identify the public's level of knowledge and opinions on forest practices, policies, forest-based industrial development, and related economic and environmental issues. The survey will provide baseline information for use in formulating program direction for TVA's Forest Resources Development Program. Some of the information may also be incorporated into TVA's Natural Resources Management Plan.

Charles E. Price,

Interim Vice President, Information Services, Interim Senior Agency Official.

[FR Doc. 92-16111 Filed 7-8-92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of San Diego, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, District Engineer, Federal Highway Administration, 801 I Street, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1307, or Richard L. Grob, Senior Environmental Planner, California Department of Transportation, 2829 Juan Street, P.O. Box 85406, San Diego, California 92110, Telephone: (619) 688-3377.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will study the easterly extension of Nobel Drive with interchange construction at I-805. The following is a brief summary of the project:

The proposed project study area encompasses approximately 600 acres of land in the eastern portion of the University Community Plan area in the City of San Diego and the western portion of Naval Air Station Miramar. The project study area includes both the La Jolla Village Drive/Miramar Road/I-805 and Governor Drive/I-805 interchanges. The project is an extension of Nobel Drive, an existing city six-lane divided arterial, from its current eastern terminus near Shoreline Drive, northeast across I-805, and intersecting with Miramar Road in the vicinity of Eastgate Mall. Nobel Drive is proposed for six lanes west of I-805 and four lanes east of I-805. An interchange would be constructed at I-805 and Nobel Drive overcrossing would be provided. Also as part of the Nobel Drive extension project, La Jolla Village Drive would be widened from Towne Centre Drive to I-805 and Miramar Road would be widened from I-805 to approximately 700 feet east of Miramar Mall. I-805 would also be widened at certain locations to accommodate the Nobel Drive interchange.

The Nobel Drive extension is being proposed by the City of San Diego to provide an alternate east-west transportation corridor to serve the University community area. The Nobel Drive extension would help alleviate existing and projected capacity problems on Miramar Road/La Jolla Village Drive and at the La Jolla Village Drive/Miramar Road/I-805 interchange. All improvements related to the interchange with Nobel Drive will be coordinated among Caltrans, FHWA, and the City of San Diego. It is anticipated that construction of the project would be divided into phases and would begin in Spring 1995.

Two primary alternatives have been identified for the Nobel Drive extension. Alternative "A" would join Miramar Road to form a four-way intersection with a realigned Eastgate Mall. Alternative "B" would join Miramar Road at a "T" intersection further west of the existing Miramar Road/Eastgate Mall intersection. Both of these alternatives would traverse land within Naval Air Station Miramar. It is anticipated at this time that three other alternatives will be evaluated in addition to Alternatives "A" and "B" and at least these five alternatives will be analyzed in the same level of detail in the EIR/EIS. The three other alternatives include the No Project Alternative, the Stopping at I-805 Alternative, and a Collector Road Alternative.

The No Project Alternative includes no extension of Nobel Drive and no new interchange at I-805. Stopping at I-805 would involve terminating Nobel Drive at I-805 and construction of the interchange and overcrossing. Variations of this alternative would involve reconstruction work at the Governor Drive and La Jolla Village Drive/Miramar Road interchanges. The Collector Road Alternative would connect Nobel Drive to Miramar Road via a collector roadway parallel to and east of I-805 from south of Governor Drive to Miramar Road.

The FHWA, Caltrans, and the City of San Diego will institute a formal scoping process for the project. Other agencies, such as U.S. Fish and Wildlife Service and the U.S. Navy, have been contacted regarding the sensitive issues involved with the project and will continue to be involved throughout the process. A public scoping meeting will be held on August 11, 1992 at 7 p.m. in the Community Room of the Regents Park Medical Centre at 4150 Regents Park Row (University City, San Diego). This is the regularly scheduled meeting of the University Community Planning Group. The meeting is intended to provide an opportunity for all interested parties to voice their concerns. Through the public scoping meeting and Notice of Intent process, significant environmental concerns will be sought, considered, and included in the scope of the project.

To ensure that the full range of issues relative to this proposed action are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental studies should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued On: July 2, 1992.

Leonard E. Brown,

District Engineer Sacramento, California.

[FR Doc. 92-16108 Filed 7-8-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0720.

Form Number: IRS Forms 8038, 8038–G, 8038–GC.

Type of Review: Revision.

Title: 1. Information Return for Tax-Exempt Private Activity Bond Issues (8038).

2. Information Return for Tax-Exempt Governmental Obligations (8038–G).

3. Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (8038–GC).

Description: Forms 8038, 8038–G, and 8038–GC collect the information that IRS is required to collect by Code Section 149(e). IRS uses the information to assure that tax-exempt bonds are issued consistent with the rules of IRC sections 141–149.

Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 74,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8038	Form 8038–G	Form 8038–GC
Recordkeeping	23 hr., 55 min.	14 hr., 21 min.	4 hr., 4 min.
Learning about the law or the form	4 hr., 56 min.	1 hr., 53 min.	1 hr., 46 min.
Preparing the form	6 hr., 29 min.	1 hr., 59 min.	2 hr., 50 min.
Copying, assembling and sending the form to the IRS	16 min.	13 min.	16 min.

Frequency of Response: Quarterly (Forms 8038 and 8038–G). Annually (Form 8038–GC).

Estimated Total Reporting/Recordkeeping Burden: 1,527,400 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–16064 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0034.

Form Number: POD 315.

Type of Review: Extension.

Title: Depositor's Application to Withdraw Postal Savings.

Description: This form is used as an application for payment by depositor or other legal representatives. This form serves to identify the depositor and insures payment is made to the proper person.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,075.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 538 hours.

Clearance Officer: Jacqueline R. Perry, (301) 436–6453, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–16065 Filed 7–8–92; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1219.

Form Number: IRS Form 8038–T.

Type of Review: Revision.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issues include state and local governments.

Respondents: State or local governments.

Estimated Number of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hours, 37 minutes.
Learning about the law or the form.	3 hours, 28 minutes.
Preparing, copying, assembling, and sending the form to the IRS.	3 hours, 46 minutes.

Frequency of Response: Other (at least once every 5 years).

Estimated Total Reporting/Recordkeeping Burden: 34,625 hours.

Clearance Officer: Garrick Shear, (202) 622–3428, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–16066 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0065.

Form Number: IRS Forms 4070, 4070–A, 4070PR, 4070A–PR.

Type of Review: Revision.

Title: Employee's Daily Record of Tips; Registro Diario de Propinas del Empleado; Employee's Report of Tips to Employer; Informe al Patrono de Propinas Recibidas por el Empleado.

Description: Employees who receive at least $20 a month in tips must report the tips to their employers monthly for purposes of withholding of employment taxes. Forms 4070 and 4070PR (Puerto Rico only) are used for this purpose. Employees must keep a daily record of the tips they receive. Forms 4070–A and 4070A–PR are used for this purpose.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 540,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 4070	4070–A	7070PR	4070A–PR
Recordkeeping	7 minutes	3 hours, 23 minutes	7 minutes	3 hours, 23 minutes.
Learning about the law	2 minutes	2 minutes	2 minutes	2 minutes.
Preparing the form	8 minutes	14 minutes	18 minutes	55 minutes.
Coping and providing	10 minutes	.....	.....	

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 32,527,200 hours.

Clearence Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–16067 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); the Effective Date, With Respect to the Republic of Moldova, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date, with respect to the Republic of Moldova, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 **Federal Register** 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Moldova. An exchange of diplomatic notes with the Republic of Moldova in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Moldova," took place in Chisinau, Moldova on July 2, 1992. Accordingly, the Agreement became effective on July 2, 1992, with respect to the Republic of Moldova, and nondiscriminatory treatment is extended to products of the Republic of Moldova as of July 2, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92–16227 Filed 7–7–92; 11:43 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 29352, Wednesday, July 1, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, July 7, 1992.

CHANGES IN THE MEETING: .

OPEN SESSION:

The item listed below has been deleted from the agenda:

FY 1993 State and Local Contracting Principles.

CLOSED SESSION: .

The Closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: July 7, 1992.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 92-16216 Filed 7-7-92; 11:10 am]

BILLING CODE 6750-06-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 10:30 a.m., Tuesday, July 7, 1992.

PLACE: Chairman's Office, 6th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (6), (7), and (8).

The Board voted unanimously that agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions listed above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-16282 Filed 7-7-92; 2:12 pm]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

Notice of Meeting

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 8:30 a.m. to 4 p.m.—Friday, July 24, 1992.

STATUS: Open.

ADDRESS: Cornell Club, 6 East 44th Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: S. William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, N.W., 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION:

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of July 24, 1992 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506—(202) 786-0536 (202) 786-9136 at least seven (7) days prior to the meeting date.

NATIONAL MUSEUM SERVICES BOARD

July 24, 1992 Meeting Agenda

I. NMSB Chairman's Report and Approval of Minutes from April 24, 1992 Meeting
II. Agency Director's Report
  A. Reviewer Training
  B. Conservation Task Force Meeting
III. Agency Agenda Reports: Programs
  A. Conservation Project Support
  B. Panel Recommendations
III. Agency Agenda Reports: Programs Other
  A. General Operating Support (GOS)
  B. Small, Minority, Emerging and Rural Museum Survey Update
IV. NMSB Open Agenda

Dated: July 2, 1992

Linda Bell,

Director of Policy Planning and Budget, Institute of Museum Services.

[FR Doc. 92-16183 Filed 7-7-92; 10:48 am]

BILLING CODE 7036-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week July 13, 1992.

A closed meeting will be held on Tuesday, July 14, 1992, at 2:30 p.m. An open meeting will be held on Wednesday, July 15, 1992, at 3:00 p.m., in Room 1030.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 14, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Litigation matter.

The subject matter of the open meeting scheduled for Wednesday, July 15, 1992, at 3:00 p.m., will be:

Consideration of whether to adopt recordkeeping and reporting rules to implement the risk assessment provisions of the Market Reform Act of 1990. The final risk assessment rules would require brokers and dealers in securities to make and keep records concerning the financial and securities activities of certain of their

affiliated companies. The rules would also require brokers and dealers to file quarterly reports with the Commission summarizing the records maintained pursuant to the recordkeeping rule. For further information, please contact Roger G. Coffin, at (202) 272–7375.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Chris Sakach at (202) 272–2300.

Dated: July 7, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16229 Filed 7–7–92; 12:51 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

Correction

In proposed rule document 92-13645 beginning on page 24589 in the issue of Wednesday, June 10, 1992, make the following correction:

On page 24590, in the file line at the end of the document, "Filed 5-9-92" should read "Filed 6-5-92".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

RIN 0905-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

Correction

In the issue of Thursday, June 25, 1992, on page 28555, in the second column, in the correction of proposed rule document 92-11177, the heading above the correction numbered 2 should read "§ 356.52 [Corrected]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905-AD05

Health Education Assistance Loan Program

Correction

In rule document 92-14662 beginning on page 28789 in the issue of Monday, June 29, 1992, make the following corrections:

1. On page 28789, in the third column, in the **SUMMARY**, in the fifth line from the bottom, "This" should read "These".

2. On page 28792, in the table, in the first column, in the first entry under 60.35(a)(2), remove "D72" that appears after "(Reporting)".

3. On page 28793, in the table, in the fourth column, in the third entry under 60.61(a)(2), "31,070" should read "31,071".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP2-280; OR-48432 (WASH)]

Proposed Withdrawal and Public Meeting; Washington

Correction

In notice document 92-14309 beginning on page 27267 in the issue of Thursday, June 18, 1992, make the following correction:

On page 27267, in the third column, in the **SUMMARY**, in the fourth line, "expend" should read "expand".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-29; Amendment 39-8132, AD 92-01-08]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

Correction

In rule document 92-15077 beginning on page 28600 in the issue of Friday, June 26, 1992, make the following corrections:

§ 39.13 [Corrected]

On page 28601, in the third column, in § 39.13:

1. In the second line, "81332" should read "8132".

2. In the first paragraph, in the third line, "PW123" the first time it appears should read "PW121"; and in the fourth line, "PW325B" should read "PW125B".

BILLING CODE 1505-01-D

federal register

Thursday
July 9, 1992

Part II

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1992; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Employment and Training Administration announces the availability of Job Training Partnership Act (JTPA) title III discretionary national reserve funds for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for the delivery of dislocated worker services, and the procedures for making application for PY 1992. The Department is again announcing that funds are available for a new Defense Conversion Adjustment grant program to be funded with Department of Defense (DoD) appropriated funds. Funds are available for obligation for this program from July 1, 1991 through September 30, 1993. Applications will be accepted for six funding categories: Category I—Intrastate Dislocated Worker Projects; Category II—Multistate, Regionwide, National or Industrywide Dislocated Worker Projects; Category III—Indian Reservation Dislocated Worker Projects; Category IV—Emergency Dislocated Worker Projects; Category V—Additional Financial Assistance to Formula-funded Programs and Activities Provided by State and Substate Grantees; and Category VI—Defense Conversion Adjustment Program projects.

DATES: Applications will be accepted on an ongoing basis throughout the Program Year. Grant awards will be made during the Program Year in response to the applications received. There is no closing date for applications under this announcement. All applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds are available, however, and applications submitted too late for consideration under Program Year 1992 funding, for Categories I to V, due to the review and processing time required, will automatically be held over for Program Year 1993 funding consideration. Applicants are encouraged to submit fully documented applications as early as possible following the dislocation event.

ADDRESSES: It is preferred that applications be mailed. Mail or hand deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Dislocated Worker Grants, Barbara J. Carroll, Grant Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone (202) 535–0577.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by section 302(a)(2) of the Job Training Partnership Act (JTPA or the Act) (29 U.S.C. 1652(a)(2)), as added by section 6302(a) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), Public Law 100–418, 102 Stat. 1107, 1525. Funding is also authorized by the 1990 National Defense Appropriation Act. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with JTPA, 20 CFR 631.61.

This program announcement consists of four parts. Part I provides the background and purpose of the discretionary funds reserved for the Secretary of Labor (Secretary) for activities under sections 323 and 324 of the Act. 29 U.S.C. 1662b and 1662c. Part II establishes basic U.S. Department of Labor policies and emphases for discretionary grants. Part III describes the basic grant application process, which is relevant to all applications. Part IV provides detailed guidelines for the preparation of each category of application, Intrastate Dislocated Worker Projects, Multistate Dislocated Worker Projects, Indian Reservation Dislocated Worker Projects, Emergency Dislocated Worker Projects, Additional Financial Assistance to Formula Funded Programs, and Defense Conversion Adjustment Programs. The primary selection criteria used in reviewing each type of application is also included. Any entity interested in submitting a discretionary proposal should carefully review parts I, II, III and the appropriate category of part IV which is relevant to the type of proposal being submitted.

The JTPA title III program is listed in the Catalogue of Federal Domestic Assistance at No. 17–246 "Employment and Training Assistance—Dislocated Workers" (JTPA title III Programs).

Table of Contents

JTPA TITLE III NATIONAL RESERVE PROGRAM YEAR 1992 SOLICITATION FOR GRANT APPLICATIONS

Part I. Background

A. Fund Availability

Funds available for title III of JTPA for Program Years (PY) 1991 and 1992 (July 1, 1991–June 30, 1992/July 1, 1992–June 30, 1993) total $526,986,000 for each year. Of this amount, $421,588,800, as prescribed in section 302(a)(1) of the JTPA, has been allotted by formula for PY 1991 and will be for PY 1992. The remainder, $105,392,000 is available for each year to be used by the Secretary for discretionary purposes including projects funded under this Notice. Of this amount, approximately $88,467,020 is being made available each year for discretionary projects under this solicitation. The balance each year will be used for other mandatory and authorized discretionary activities. DoD Funds are also available to fund Defense Adjustment Conversion programs awarded pursuant to the requirements contained in Part IV F.

B. Circumstances Under Which Services May Be Provided With JTPA National Reserve Funds

(1) Services may be provided as described in JTPA section 314 in the following circumstances:

(a) Mass layoffs, including mass layoffs caused by natural disasters or Federal Government actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(b) Industrywide dislocations;

(c) Multistate dislocations;

(d) Special projects carried out through agreements with Indian tribal entities;

(e) Special projects to address national and regional concerns;

(f) Demonstration projects;

(g) To provide additional financial assistance to programs and activities provided by States and substate grantees under part A of Title III;

(h) To provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate.

(i) To provide for emergency assistance to a distressed industry or area as determined by the Secretary with the agreement of the Governor; and

(j) To provide program funds where there is a dislocation resulting from a reduction in Defense Department procurements or the full or partial closure of military facilities.

(2) Funds appropriated to DoD are now available for individual projects to assist workers dislocated as a result of reductions in Defense Department procurements and the closing or reduction of military facilities. The Department may fund any approved projects designed to assist workers dislocated as a result of reductions in Defense procurements or military base closings or reductions out of those appropriations.

Part II. Department of Labor Policy and Program Emphasis

A. Basic Policies

1. Available funds shall be awarded by the Grant Officer in a manner that efficiently targets resources to areas most in need, and in a manner which promotes effective use of funds.

2. All projects and activities funded shall be subject to the Act, the appropriate regulations, the requirements contained in these instructions and the Grant Officer's award document(s) and any subsequent grant amendment.

3. Cost limitations contained in the Act and regulations shall be applicable unless otherwise specifically approved by the Grant Officer. Any request to vary statutory and/or regulatory cost limitations must be specifically justified in the application. No variations are allowable unless specifically authorized by the Grant Officer.

4. Title III national reserve funds and Department of Defense appropriated funds provided to the Department shall not be considered as an ongoing source of funds for existing centers or other projects or activities. For this reason, it is a general policy of the Department that it will not refund national reserve projects. Projects involving extraordinary circumstances such as massive continuing layoffs, may be considered for refunding.

5. National reserve funds are not to be used to subsidize a grantee's on-going operations. A grantee may only be reimbursed for costs over and above those costs associated with the grantee's on-going costs. It is the Department's position that where national reserve funded projects are operated by existing State or substate grantees, administrative savings will be realized.

Note: Substate grantee is defined at JTPA section 301.

6. National reserve funds and Department of Defense funds shall only be provided to meet needs which cannot be met by JTPA formula funds or other State and local resources. Grants will be primarily awarded therefore, where substantial numbers of workers, relatively speaking, in a substate area, labor market, region or industry are dislocated.

Note: Substate area is defined at JTPA section 301.

7. Eligible dislocated workers to be served with JTPA appropriated funds shall be workers meeting the requirements of section 301(a) of the Act and 20 CFR 631.3. Eligible dislocated workers to be served with funds provided to the DOL by the Department of Defense shall meet the requirements of part IV, F, category VI, section 1.(b) of these guidelines.

8. For Intrastate (Category I) and Multistate (Category II) applications, the threshold for determining that a "substantial" number of workers have been affected shall be the definition of "substantial layoff" at 20 CFR 631.2. Applications may also be submitted to assist workers dislocated from small and medium sized companies within a single State where the Governor has determined such workers constitute a substantial proportion of the State's or substate area's economic base as described at 20 CFR 631.30(b).

9. The Department shall make every effort to review and respond to each application within 45 days of the Department's receipt of the application.

10. No grant funds awarded shall be used to reimburse costs incurred prior to the date authorized by the Grant Officer.

B. Secretary's Rights Reserved

The Secretary reserves the right to distribute some of these funds in a manner other than that provided by this notice, consistent with the Act, and taking into consideration special circumstances and unique needs which may arise throughout the course of the program year.

The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

If insufficient applications are received by the Department which are of acceptable quality and which meet the guidelines and selection criteria

contained in this notice to exhaust the title III JTPA national reserve account, the Department shall take whatever action it deems necessary and appropriate, consistent with the Act and the regulations, to exhaust the funds. This could include returning any unobligated national reserve funds to the U.S. Treasury.

C. Basic Planning Rules

1. Operating Definition of State

For purposes of these grant application procedures, State shall be the 50 States of the United States and the following grant eligible territories and legal jurisdictions: District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Marianas, Republic of the Marshall Islands, Federated States of Micronesia, and the Republic of Palau.

2. Allocation of Costs

a. State Administration. States may include no more than 1.5 percent or $15,000, whichever is lower, for State administration of "pass-through" grants. State administrative costs requested that are above this established set aside must be accompanied by a justification showing the projected person-hours and functions to be performed and any other relevant cost information. This cost is to be included in the Administrative cost category. It is expected that these funds will be used for subgrant administration, the provision of technical assistance, onsite and desk monitoring, and data collection.

b. State 40 percent funds. States must provide specific information regarding why State 40 percent funds are not available to support a project.

c. Administrative Requirements for Grant Projects.

(1) In addition to applicable administrative requirements contained in the Act and regulations, some grantee organizations will be subject to other requirements as listed below:

(a) State and local Governments (except for JTPA grant recipients under the Federal, State, Governor-Secretary Agreement block grant)—OMB Circular A–87 (cost principles) and 41 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local Governments). The audit requirements at 29 CFR part 96 also apply.

(b) Non-Profit Organizations—OMB Circulars A–122 and A–133 (Audits) apply.

(c) Educational Institutions—OMB Circulars A–21 and A–133 (Audits) apply.

(d) Profit Making Commercial Firms—Federal Acquisition Regulations (FAR) 48 CFR part 31.

(2) No equipment with a unit cost of $500 or more may be purchased without specific prior approval of the Grant Officer. Any planned equipment purchases with a unit cost of $500 or more must be justified and specifically listed along with its purchase price in the grant application. Leased equipment does not require prior approval from the Grant Officer.

c. Establishment of a Labor Management Committee. Costs associated with the establishment of a Labor Management Committee are appropriately charged as Rapid Response costs against the State's 40 percent title III formula funds. Therefore, they are not to be charged to the grant. Ongoing operational costs of the Labor Management Committee during the period of performance of the grant are chargeable to the Administration Cost category.

d. When a participant is eligible for either partial or full reimbursement of training costs (*e.g.*, Pell grants, employer tuition reimbursement, etc.) the application must describe the procedures established for the reimbursement and/or crediting of such costs if such costs are initially charged to the national reserve grant.

Note: Where national reserve funds are expended for training prior to certification of TAA eligibility, national reserve funds shall not be reimbursed to the JTPA program when TAA funds become available to cover the balance of the training.

e. Necessary and Reasonable Costs/Cost Effectiveness. In accordance with 20 CFR 629.37(a), costs will be required to be "reasonable" and "necessary" to be charged to the grant. In reviewing a grant application, the Secretary shall consider these criteria. Areas of concern include but are not limited to: Staff to participant ratios; the proportion of staff costs to the total grant; the cost of purchased or leased equipment; the cost of proposed training as it relates to the complexity of the skills to be learned, the length of training, and the provider's access to other supplemental funding sources; etc. The extent to which the proposed project budget reflects costs that appear to be "reasonable" and "necessary" will be a significant factor in determining the project's cost effectiveness.

f. All indirect costs that are administrative in nature shall be charged to the Administration Cost category. Any indirect costs that are not administrative costs shall be itemized separately in the appropriate cost category.

g. It is not intended that national reserve account (NRA) projects automatically be charged 15 percent of the award amount toward the overall administrative costs of the SDA/substate grantee. The amount planned to be used for administration and the specific purposes for which it will be used must be determined in order for an administrative cost budget line item to be established. Once determined, and approved, the amount budgeted for administration may be included in any existing SDA/substate grantee administrative cost pool where the SDA/substate grantee is administering the national reserve grant. A portion of costs charged to the administrative cost pool may be allocated to the NRA, up to the total amount included in the cost pool from the NRA grant and consistent with overall expenditures for the NRA grant and consistent with existing rules for the charging of costs against an administrative cost pool.

3. Additional Funding

The amount of a grant award cannot be increased after the grant is awarded. If circumstances change so substantially that additional funds are required to serve dislocated workers from the targeted company, another grant application must be submitted. The same review and approval procedures will apply to a second grant application as apply to other dislocated worker project proposals. A second application shall include an up-to-date status report of performance under the first award including: overall enrollments, enrollments by activity and expenditures (obligations and expenditures by cost category).

4. Activities

a. The application budget shall not include costs for activities or services begun with State funds prior to the grant award. If initial training costs for a participant are incurred with State funds, the balance of training cost commitment for that participant must be funded by the State.

b. Applications shall not provide for using national reserve funds for work experience.

c. National reserve funds shall not be used for rapid response activities except in the case of additional financial assistance to formula funded programs. Rapid response activities are paid for out of State 40 percent funds.

d. National reserve funds shall not be awarded to fund an individual training project or a particular activity.

5. Identification of Participants To Be Served

The applicant must demonstrate how the planned number of participants to be served was determined. Furthermore, the applicant must explain how those affected workers most in need of services to return to the labor force will be identified and assured access to necessary services.

6. Project Locations

If an applicant plans to operate more than one project or subproject, each location shall be listed and separate budgets, implementation schedules and, where appropriate, lists of local demand occupations for retraining provided. In all cases, the applicant must also include a summary budget and implementation schedule for the entire project.

7. Placement Rate Expectations

Since funds and resources are specifically focused on the needs of a targeted group of workers and their employment and training needs, the Department expects that:

(a) Project placement rate—The planned entered employment rate for any program will be at least 70 percent.

(b) Occupational classroom training—A placement rate of 75 percent will be expected from occupational classroom training. This rate may be calculated by including the provision of job search assistance and other services to participants who receive occupational classroom training.

(c) On-the-Job Training (OJT)—A placement rate of at least 80 percent will be expected for OJT. This rate may be calculated by including the provision of job search assistance and other services to participants who receive OJT. If the applicant does not believe such a rate can be achieved in its proposal, it must provide reasons for planning a lower rate.

8. On-the-Job Training (OJT)

No OJT under six weeks duration shall be funded with national reserve grant funds. Any OJT training for between six and 10 weeks in duration shall be consistent with an approved rationale to determine the length of training for a given occupation. The rationale to be used shall be stated in the application. An OJT contract must contain a "hire first" provision.

Part III. The Basic Application Process

A. Funding Considerations

1. Identification of Dislocated Workers

a. Dislocated workers eligible to be provided services with JTPA national reserve or Defense Department appropriated funds are defined as individuals who meet the definitions set forth in section 301(a) of the Act and 20 CFR 631.3; 29 U.S.C. 1651(a). The dislocated workers to be served must be specifically identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (Section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", those least likely to be recalled, those with the least transferrable or most obsolete occupational skills, and those with the most barriers to other employment opportunities such as poor reading or math skills. Those "most in need" for purposes of national reserve funding, will be determined on a project-by-project basis. Applications shall provide that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources such as the State Employment Service.

2. Dislocated worker project applications selected for funding will generally be those which:

(a) Effectively identify and target the project to specific groups of dislocated workers, industries or plants, occupations and geographic areas;

(b) Specify occupational and educational training related to local demand occupations;

(c) Demonstrate a timely response to the target group's employment and training needs for such services; and

(d) Are cost-effective in terms of services to be provided and results to be achieved.

B. Screening and Review of Applications

1. Screening Requirements

All applications will be screened to determine completeness and conformity to the Act, regulations, application guidelines and other requirements contained in this announcement.

In order for an application to be in conformance, it must be paginated and include the following:

a. Transmittal letter. A transmittal letter from the Governor or the applicant's authorized signatory containing the required assurances.

b. Standard form. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. Budget. A detailed line item budget according to the applicable cost categories found at 20 CFR 631.13 of the JTPA Title III regulations and as outlined in these guidelines.

d. Project narrative. The narrative portion of the application including attachments shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. Certifications. (i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency annual certification renewable every Fiscal Year per Training and Employment Information Notice (TEIN) No. 15–90. This certification requirement applies only to the Federal grant applicant. The "Certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transactions" must be submitted with all national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying" shall be submitted with each national reserve application as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

(iv) When the applicant is not the State JTPA entity (i.e., subject to the JTPA Governor/Secretary Agreement), SF 424B, Assurances—Non-Construction Programs, with an original signature, must be submitted with the application. This assurance form is found in appendix D.

2. Review and Evaluation

Complete conforming applications will be reviewed and evaluated based on the selection criteria for each category and the availability of funds.

C. Information and Reporting Requirements

1. Records

By accepting a grant, the grantee agrees that it shall maintain and make available to the U.S. Department of Labor upon request, information on the

operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants, and cumulative expenditures.

2. Reports

The grantee shall submit to the Employment and Training Administration, an original and two copies of:

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205–0274), and

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205–0274).

D. Grant Funding Procedures

1. Proposals funded pursuant to the Secretary/Governor agreement shall be subject to the following procedures. Where proposals are approved for funding pursuant to the Secretary/Governor Agreement, immediate funding shall be provided. The State and/or local program may be required to submit additional information to satisfy requirements that have been determined to be unacceptable in the original proposal. In such circumstances, the Department may or may not allow the incurring of costs prior to the approval of the modification submitting the additional information depending on the nature and the seriousness of the problems identified. The Grant Officer's approval letter shall contain the Department's decision on this issue.

2. Proposals not funded pursuant to the Secretary/Governor Agreement shall be subject to the following grant award procedures:

a. Once a decision is made by the Secretary to approve a proposal, the Secretary shall send a letter to the applicant announcing the award.

b. The applicant shall also be contacted by telephone by the Employment and Training Administration's (ETA) Grant Officer to resolve any problems identified in the proposal and to develop a grant to be executed by the applicant and the Department of Labor. A letter announcing this process shall also be forwarded to the applicant from the ETA Grant Officer.

c. All of the details of the grant shall be resolved by telephone and the grant document shall then be completed by the Department's grants office and forwarded in duplicate to the applicant for signature. The applicant shall sign both copies of the grant document and return the copies to the ETA Grant Officer for final execution.

d. The ETA Grant Officer shall sign both copies of the grant, and forward one signed copy to the applicant. The grant document and the transmittal letter shall instruct the grantee as to the date that the grantee may commence to incur costs against the executed grant.

3. Emergency awards. When an award is approved, the Secretary shall send an award letter to the applicant.

a. For emergency proposals which are funded pursuant to the Secretary/Governor Agreement, immediate funding, normally 30 percent of any approved request shall be provided. The applicant shall then be required to submit a fully documented proposal in accordance with the appropriate requirements. Normally the grantee will be allowed to immediately begin incurring costs once the award is made. Such costs may be incurred pursuant to the initial proposal, the award letter, the appropriate assurances, the Act, the regulations, and the application procedures.

In certain situations it may be necessary to require additional information before the grantee may commence to incur costs. The grantee shall be notified in the award letter where this is the case and of the requirements that must be met before costs may be incurred.

The final funding level, and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

b. For emergency proposals which are approved but not funded pursuant to the Secretary/Governor Agreement, the ETA Grant Officer shall both fax and mail an original initial grant once the Secretary has approved the award. The grantee shall sign both the faxed grant and the original grant, in duplicate. The signed fax copies should be faxed immediately to the Grant Officer. The two copies of the signed original grant shall be returned by mail as soon as executed. The Grant Officer will sign the returned fax copies and refax one to the grantee with a cover letter which will authorize the grantee to commence to incur costs and which will also instruct the grantee regarding the development and submission of a fully documented proposal. The Grant Officer shall, upon receipt of the two signed original copies, sign and return one original with a cover letter. This original initial grant will contain the same date for incurring costs as the faxed grant and the same instructions for developing and submitting a fully documented proposal.

The final level and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

E. Grant Amendment Procedures

The Department recognizes that circumstances will arise where grant amendments will be necessary, and that those circumstances will be, in some cases, beyond the control of the project operator. Nevertheless, the Department is concerned about the need to amend discretionary awards since such amendments can, and in many cases do, represent poor planning and/or poor management of the project. Following are guidelines for when an amendment is necessary.

1. All grant amendment requests must be submitted to the Grant Officer by the authorized signatory citing the number of the Notice of Obligation transmitting the grant funds to the State or, in the case of a grantee who is not subject to the JTPA Governor/Secretary Agreement, the grant number.

The States and grantees are responsible for monitoring the implementation and progress of their national reserve projects and identifying circumstances that would require a grant amendment request. All requests for grant amendments must be accompanied by an explanation of the reasons for proposing such a change to the originally approved project plan.

a. There are several reasons for grant amendments. Following are types of reasons, and the information or possible changes required related to each reason.

(1) Grant Amendment Requests required due to changes in circumstances after the grant award, such as, but not limited to, a delay in layoff or plant closure date, the recall of a number of the project participants, certification of worker eligibility for Trade Adjustment Assistance, or recruitment difficulty resulting in enrollments significantly below the planned level. Such circumstances may require substantial amendment of the project plan and may entail any or all of the following aspects of the plan.

(a) Extension of the period of performance. When an extension of the period of performance beyond the approved project period of operation is necessary, such extension requests must be submitted 60 days before the scheduled expiration date of the project as designated in the grant award letter or subsequent correspondence. The reason for the request explaining the change in circumstances that requires the extension must be provided.

(b) A revised quarterly implementation plan reflecting the requested period of performance which reflects the activity through the most recent quarter must be provided.

(c) A revised budget (if appropriate) must be provided.

(2) Grant amendment requests required due to budget changes. The following budget changes will require a grant amendment request. In each case, an explanation of the circumstances requiring the change and a revised overall grant budget must accompany the request. Any other parts of the approved grant impacted by such changes must also be submitted for approval.

(a) Any proposed increase to the approved budget for Administration.

(b) A proposed increase or decrease of 15 percent or more in the approved project budget for Retraining, so long as the decrease does not result in an overall expenditure for Retraining of less than the 50 percent for this cost category.

(c) In the case of any budget change regardless of the percentage that would result in a decrease in the Retraining cost category line item below the required 50 percent expenditure rate for Retraining, or requiring a change in an expenditure rate previously waived by the Secretary, a grant amendment request must be submitted. If the budget change would result in a retraining expenditure rate below the required 50 percent level, a request for waiver including justification must accompany the amendment request.

(d) A proposed increase or decrease of 15 percent or more in the approved project budget for Supportive Services. The resulting increase may not exceed the 25 percent cost limitation for this cost category.

(3) Grant amendment requests required due to changes in project participant activity levels such as any increase or decrease of more than 15 percent in the total number of participants to be served or in the number of participants to receive Retraining services including classroom training, occupational skill training, on-the-job training, entrepreneurial training, remedial education, or other proposed training serving more than 10 participants. In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) A revised quarterly implementation plan which reflects the activity through the most recent quarter, and the appropriate adjustments to reflect the requested new activity level.

(c) A revised budget (if appropriate).

(4) Grant amendment requests due to a change in the targeted dislocated workers (i.e., company(ies) industry, etc.) and or geographic area(s) to be served. In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) When appropriate, a revised quarterly implementation plan reflecting the activity through the most recent quarter, and making the appropriate adjustments to reflect the requested activity level, or a statement to indicate no such activity level changes are anticipated. If a new subproject is added to the grant, each subproject must have a quarterly implementation schedule, and an overall implementation schedule for the project must also be submitted.

(c) A revised budget (if appropriate), or a statement indicating such a change will not affect budget line items. If a new subproject is added to the grant, each subproject must have a separate budget, and an overall project budget must also accompany the request.

(d) The amendment must specifically state if a substantial number of the new workers to be added to the target group are represented by a labor organization. If appropriate, based on the statement provided, evidence of consultation with labor organizations representing such workers must be provided before expenditures will be authorized to serve these workers.

(e) Where a new geographic area is involved, evidence of review by the substate area's Private Industry Council(s) must also accompany the request.

(5) Grant amendment requests required when it is projected that national reserve grant funds will remain unexpended. As soon as it becomes apparent that funds will be unexpended, the State should notify the Employment and Training Regional Office.

If this information becomes available within the Program Year in which the grant funds were awarded, the State may submit a request to the Grant Officer to deobligate those funds it projects to be unexpended. Such funds may be reobligated by the Secretary to another grantee requiring funding assistance to address a worker dislocation.

When the underexpenditure is not identified until after the end of the Program Year in which the grant funds were awarded, the funds are not available for reobligation. Therefore, States may propose an effective alternative use of such funds. If the State desires to reprogram a portion of the unexpended funds originally awarded to a project, it must provide the following information.

(a) Evidence that the original target group has substantially been served, or may be served at a reduced funding level. The circumstances resulting in this assessment by the State must be explained.

(b) Documentation of the services provided to the original target group. This may follow the format of the implementation schedule in identifying activities and numbers of participants served.

(c) Evidence of expenditures for the original target group by cost category.

Note: The original project may continue to operate at a reduced level of activity and expenditure while a new subproject serving another group of targeted workers is funded and becomes operational using the projected unexpended funds.

(d) A request to extend the period of performance of the grant. Please note the time limitations pursuant to Section 161(b) on authorization to expend national reserve funds.

(e) A proposal for expenditure of the projected unexpended funds must include the same information required for submittal of a grant application—identification of the target groups; dates of the dislocation; number of workers affected; an explanation of how the projected number of participants was derived; an analysis of the labor market relative to the targeted participants; identification of demand occupations in which retraining will occur; a description of the services to be provided; a cumulative quarterly implementation schedule by major services to be provided, terminations and entered employment, and projected expenditures; a detailed line item budget (including staffing information); evidence of labor consultation where appropriate, and documentation of PIC/LEO review where appropriate.

All requests must be submitted in a timely basis to allow sufficient time for the reasonable expenditure of the funds in question during the remaining statutory time limitation for the funds.

2. Requests for grant amendments will be considered in light of the general purposes of the national reserve account, the selection criteria for national reserve projects published annually by the Employment and Training Administration in the **Federal Register**, and the purposes of the original grant award. Amendments which request significant changes in the

target group to be served will be reviewed in the same context as a new proposal.

3. The Grant Officer will advise the State or national reserve grantee in writing of any approval or disapproval of the proposed grant amendments, generally within 30 days of receipt of the grant amendment request.

Part IV. Specific Application Requirements

A. Category I—Intrastate Dislocated Worker Projects

An application for an Intrastate Dislocated Worker Project, within a single State, must comply with the following requirements:

1. Eligible Grant Applicants

The eligible grant applicants for such projects are the 59 State JTPA grant recipient agencies under the Federal-State, Governor-Secretary Agreement. ("State" as previously defined.)

2. Eligible Project Operators

Eligible subgrantees who may operate dislocated worker projects include but are not limited to State agencies, JTPA title III substate grantees; units of local government; local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations; labor organizations; regional development councils; industry-sponsored associations; private-for-profit organizations and Indian tribal entities.

3. Submission of Applications

Applications for Intrastate Dislocated Worker Projects must be submitted to the Department of Labor by the Governor or the State JTPA agency accompanied by the assurances listed below from the authorized signatory. Applications submitted by other entities shall not be considered for funding.

4. Required Assurances

a. Applications shall be transmitted with a letter from the Governor or the authorized JTPA State signatory official containing the following assurances:

If the proposed project is funded:

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered, by the grantee, in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto, as approved by the Grant Officer, and shall be consistent with the approval letter signed by the U.S. Department of Labor Grant Officer transmitting the grant award.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities.

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant. The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—Following receipt of grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—Based on the State's oversight authority, the State agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The Governor and substate area grantee must include comments regarding the proposed project with respect to the availability of State and substate formula funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project. These comments shall be forwarded by the Governor or authorized signatory at the time of submission.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each intrastate grant application submitted for JTPA Title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the Project:* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location(s) (city, county);

(3) The planned starting and ending dates of the project;

(4) The total amount of Title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the counties and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

d. *Project Narrative:* The project narrative shall address the following elements:

(1) *Project Description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. The description should include:

(a) The industry(ies) affected;

(b) The reason for the layoff(s) or closure(s)

(c) The schedule for layoff(s) and/or closing(s);

(d) The number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of workers affected by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their current educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled; applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) occurred more than 4 months prior to submittal of the application, information shall be provided to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (*e.g.*, current survey of affected workers, unemployment insurance (UI) data, *etc.*).

(e) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(f) The economic conditions for the State and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to document the severity of the need for such a project.

(g) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State, and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee title III funds.

(a) The status of fund availability (obligations and expenditures) for both the State's title III formula program and any current discretionary awards shall be provided. This information shall be through the end of the latest quarter for which data are available. Where a substate grantee will operate the proposed program, the same information regarding fund availability, obligation and expenditure of substate formula funds, as well as any discretionary national reserve funds, shall be provided.

(b) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to section 141 (b) and (h) of JTPA, that the project operator shall ensure that duplication of services does not occur.

The current TAA funding availability and obligations shall be provided as well as information or any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified to receive TAA, including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care, and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for retraining. The request shall provide an estimate of the number of workers to receive TAA funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA funded training should also be explained.

(c) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be noted.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor market(s) including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State or substate area is the least acceptable approach to providing this information. Current local information, such as special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in paragraph IV.A.5. above, all applications for funds will be required to:

(a) Describe the involvement (if any) of organized labor in the development and operation of proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to:

(i) The local substate area grantee(s),

(ii) Veterans' programs (including JTPA) available in the area,

(iii) The State Employment Service,

(iv) The unemployment compensation system, to ensure that workers understand the requirement, for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations,

(v) The Pell Grant program, and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, or special appropriations are available to the project, include a brief discussion of the

activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity will be accountable for eligibility determination.

(b) Basic Readjustment Services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level);

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(c)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

Note: National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products, general employee upgrading, *etc.*;

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e));

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation. Enrollment of all participants should normally occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included; and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report required fiscal and management information.

(d) Information about each previous grant program experience including, if the proposed project operator has been awarded and operated a national reserve grant or substate grant within the last 2 program years:

(i) The target group served;

(ii) Amount of the grant award(s);

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If the project is still in operation, provide expenditure data through the most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(viii) The total number of placements and the placement rate (planned vs. actual).

(9) *Detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.

(i) The budget shall provide information by both cost categories as discussed below and by line-items. The suggested format in Plate I is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I. Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989) shall be identified.

(iii) For an Intrastate project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the projected person-hours and functions to be performed.

PLATE I

Budget	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff salaries	X	X	X		X
Fringe benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant).	X	X	X		X

PLATE I—Continued

Budget	Administration	Basic readjustment	Retraining	Supportive services	Total
(2) Staff travel	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
● Rent	X	X	X		X
● Maintenance	X	X	X		X
● Utilities	X	X	X		X
(5) Consumable office supplies	X	X			X
(6) Consumable instructional materials		X	X		X
(7) Equipment	X	X	X		X
● Lease	X	X	X		X
● Purchase (Attach supplement/ narrative, listing and explaining each item leased and/or purchased $500 or over).	X	X	X		X
(8) Relocation (section 314)		X	X		X
(9) Subcontracts					
● Tuition			X		X
● OJT wages			X		X
● Fixed unit price 20 CFR 629.38(e)(2)					X
● Audit	X				
● Other (identify)	X	X	X		X
(10) Supportive services				X	X
● Needs related payments				X	X
● Child care				X	
● Transportation				X	
● Other				X	
(11) Other (identify)	X	X	X		X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "0". Observe parnthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds, shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources—employer, union, State title III formula-allotted, State vocational education, economic development funds, *etc.*,—the budget shall indicate separately for each line item, the total cost, the amount to be funded from the national reserve account, and the amount to be funded from the other source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for Intrastate Dislocated Worker Project JTPA title III national reserve funds shall be evaluated and selected for funding based on the following:

a. Overall criteria (JTPA section 322(a)(3); 29 U.S.C. 1662b(a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need, and

(2) promotes the effective use of funds.

b. Application Review

(1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III,

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal,

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided, or

(d) The application is not consistent with statutory, regulatory or application requirements.

c. Additional specific criteria for evaluation and selection of applications for Intrastate Dislocated Worker Projects.

(1) Severity of need. The severity of the circumstances and need as described in the grant application *(e.g.,* the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target Group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific

occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The Grant Officer shall also consider whether costs appear to be necessary and reasonable (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and effficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application submitted by the Governor or other interested parties.

8. Funding Mechanism

The following apply:

a. (1) For an Intrastate Dislocated project, the Department shall issue a Notice of Obligation (NOO) of Title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(2) A grant award letter containing the general requirements established as a condition of the grant award shall accompany the NOO.

(3) The Act, regulations, grant award letter, grant application, assurances and any amendments approved by the grant officer shall govern the operation of the project.

b. Unless otherwise directed in the grant award letter, the effective date for the use of the funds shall be the date of the NOO accompanying the grant award letter and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

B. Category II—Multistate, Regionwide, National or Industrywide Dislocated Worker Projects.

An application for a Multistate, Regionwide, National, or Industrywide (MRNI) dislocated worker project must comply with the following requirements:

1. Eligible Grant Applicants

Applications may be submitted by, but are not limited to, State agencies, local public agencies such as community colleges or area vocational schools, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, industry-sponsored associations, and private-for-profit organizations.

All entities may not be appropriate applicants for this grant category. Applicant entities must be an appropriate agency given the nature and extent of the proposed project.

2. Eligible Project Operators

Eligible project operators shall include State agencies, substate grantees, service delivery areas, units of local government, local public agencies, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, industry-sponsored associations, private-for-profit organizations and Indian tribal entities.

3. Submission of Applications

a. In the case of MRNI projects, an application shall be submitted directly to the Grant Officer accompanied by the required certifications (appendices A, B, and C to this notice) and with the assurances listed below from the authorized signatory for the applicant.

b. An application shall not be accepted for consideration unless the applicant can demonstrate that, for multistate, national and regionwide applications, there have been closings or mass layoffs affecting a minimum of 100 workers per site in at least 2 States. For industrywide projects, there must have been closings or mass layoffs affecting a minimum of 100 workers per site in at least three different plants or facilities in the same industry in at least two different States.

4. Required Assurances

a. Applications for multistate, regionwide, or industrywide projects for dislocated workers shall be transmitted with a letter from the proposed grantee containing the following assurances:

If the proposed project is funded:

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered by the grantee in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto as approved by the Grant Officer, and shall be consistent with the grant document signed by the U.S. Department of Labor Grant Officer.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditure data on a quarterly basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested.

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds, and

—Following receipt of grant approval, the proposed grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee shall provide additional information explaining the projected implementation date.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The grant applicant must include in its submission, information regarding the availability or non-availability of State and substate formula funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each Category II grant application submitted for JTPA title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of Operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the Project:* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and telephone number of a contact person for the project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant; and

(11) The planned cost per entered employment.

d. *The Project Narrative:* The project narrative shall address the following elements:

(1) *Project description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. The description shall:

(a) Demonstrate that the subject industry's or company's employment is declining and that there are poor prospects for reemployment in a similar occupation or industry based on any combination of the following data: labor turnover, Employment Service vacancy data, labor market conditions in the States with industry facilities, and production trends, or that the Secretary has determined the industry to be depressed based on data available to the Federal Government.

(b) Indicate a schedule for layoff(s) and/or closing(s).

(c) Indicate the number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of affected workers by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their current educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled. Applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (i.e., current survey of affected workers, Unemployment Insurance (UI) data, etc.).

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated should be provided.

(2) *Existing Resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee title III funds for the geographic area(s) to be served.

(a) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to section 141(b) and (h) of JTPA, that the project operator shall ensure that duplication of services does not occur 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified as eligible to receive TAA, including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for retraining. The request shall provide an estimate of the number of workers to receive TAA funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA funded training should also be explained.

Note: TAA eligibility may vary by subproject site and must be addressed on a site by site basis.

(b) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable,

severance pay arrangements should be addressed.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State(s) or substate area(s) is the least acceptable approach to providing this information. Current local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in paragraph IV.B.5. above, all applications for funds will be required to:

(a) Described the involvement (if any) of organized labor in the development and operation of proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to;

(i) The local substate area grantee(s),

(ii) Veterans' programs (including JTPA) available in the area;

(iii) The State Employment Service, if appropriate;

(iv) The unemployment compensation system to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;

(v) The Pell Grant program; and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, or special appropriations are available to the project, include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration Section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Identify the entity responsible for eligibility determination.

(b) Basic readjustment services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level).

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

Note: National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, *etc.*;

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with retraining activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e));

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of all participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report as necessary required fiscal and management information.

(d) If the proposed project operator has operated or been awarded a national reserve grant or subgrant within the last 2 program years, the following information about each previous grant shall be provided:

(i) The target group served;

(ii) Amount of the grant award;

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If project is still in operation, provide expenditure data through the most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(iii) The total number of placements and the placement rate (planned vs. actual).

(9) *Detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.

(i) The budget shall provide information by both cost categories as discussed below and by line-items. The suggested format in Plate I is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I.

Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989) shall be identified.

(iii) For an Intrastate Project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. These costs are to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the projected person-hours and functions to be performed.

PLATE II.—BUDGET

	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff salaries	X	X	X		X
Fringe benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant).	X	X	X		X
(2) Staff travel	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
● Rent	X	X	X		X
● Maintenance	X	X	X		X
● Utilities	X	X	X		X
(5) Consumable office supplies	X	X			X
(6) Consumable instructional materials		X	X		X
(7) Equipment	X	X	X		X
● Lease	X	X	X		X
● Purchase (Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over).	X	X	X		X
(8) Relocation (Section 314)		X	X		X
(9) Subcontracts					
● Tuition			X		X
● OJT wages			X		X
● Fixed Unit Price 20 CFR 629.38(e)(2)					X
● Audit	X				
● Other (Identify)	X	X	X		X
(10) Supportive services					
● Needs related payments				X	X
● Child care				X	
● Transportation				X	
● Other	X	X	X		X
(11) Other (Identify)	X	X	X		X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed; if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds, shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources—employer, union, State Title III formula-allotted, State vocational education, economic development funds, etc., the budget shall indicate separately for each line item, the total cost, the amount to be funded from the national reserve account, and the amount to be funded from the other source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for JTPA Title III national reserve funds for Category II dislocated worker projects shall be evaluated and selected for funding based on the following:

a. *Overall criteria.* (JTPA Section 322(a)(3); 29 U.S.C. 1662b(a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need, and

(2) Promotes the effective use of funds.

b. *Application Review.* (1) Applications shall be reviewed and approved, or rejected, based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III;

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided, or

(d) The application is not consistent with statutory, regulatory, or application requirements.

c. *Additional specific criteria for evaluation and selection of applications for Multistate, Regionwide, National or Industrywide Dislocated Worker Projects.* (1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including State/substate title III formula-funded activities and other JTPA programs, as well as the TAA program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, etc. The Grant Officer shall also consider whether proposed costs are necessary and reasonable. (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application received by the grant officer.

8. Funding Mechanism

The following apply:

a. (1) In case of an award to an existing State JTPA grantee, the Grant Officer shall issue an award letter and Notice of Obligation. For others, an appropriate grant document shall be executed by the DOL Grant Officer and the grant applicant's official signatory.

(2) The Act, regulations, grant award letter/agreement, grant application assurances and any amendments approved shall govern the operation of the project.

b. Unless otherwise directed in the grant award document, the effective date for the use of the funds shall be the date of the grant award letter or grant agreement and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

C. Category III—Indian Reservation Dislocated Worker Projects

An application for a dislocated worker project on an Indian reservation shall comply with the following requirements:

1. Eligible Grant Applicants

In the case of dislocation events affecting American Indians on an Indian reservation, tribal entities receiving JTPA grant funds pursuant to section 401 shall be eligible grant applicants.

2. Eligible Project Operators

Indian tribal entities may act as project operators or may contract with appropriate entities to administer the delivery of employment and training services to eligible participants.

3. Submission of Application

Applications for dislocated worker projects to operate on Indian reservations shall be submitted directly to the Grant Officer accompanied by the appropriate certifications (see appendices A, B, and C to this notice) and by the assurances listed below.

4. Required Assurances

An application for a dislocated worker project to operate on an Indian reservation shall be transmitted with a letter from the proposed grantee containing the following assurances.

If the proposed project is funded:

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered, by the grantee, in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto, as approved by the Grant Officer, and shall be consistent with the approval letter signed by the U.S. Department of Labor Grant Officer transmitting the grant award.

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

—The Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested.

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities, and

—Following receipt of the grant approval, the Grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee shall provide additional information explaining the projected implementation date.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The applicant must include in its submission comments regarding the proposed project with respect to the availability of title III and

title IV–A funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment, if applicable.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each grant application submitted for JTPA Title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the project.* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location (Indian reservation);

(3) The planned starting and ending dates of the project;

(4) The total amount of title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The name of the Indian reservation on which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the title IV–A grantee serving the area in which the project is to be operated.

d. *The Project Narrative.* The project narrative shall address the following elements:

(1) *Project description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. An application by an Indian tribal entity for funds for a dislocated worker project shall be based upon a specific plant closure or mass layoff that has occurred within the past year preferably within the last six months. The facility involved must be located on an Indian reservation. The description should include:

(a) The industry(ies) affected;

(b) The schedule for layoff(s) and/or closing(s);

(c) The number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of affected workers by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, or other entities, such as the Bureau of Indian Affairs, based on their educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled; applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information shall be provided to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers.

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the reservation and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated shall be provided.

(2) *Existing resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee JTPA Title III funds or Title IV–A funds.

(a) The status of fund availability (obligations and expenditures) for any Title IV–A program on the reservation(s) shall be provided. This information shall be through the end of the latest quarter for which data are available.

(b) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to Section 141(h) of JTPA, that the grantee shall ensure that duplication of services does not occur.

29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified as eligible to receive Trade Adjustment Assistance (TAA) including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total

grant must be expended for Retraining. The request shall provide an estimate of the number of workers to receive TAA-funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA-funded training should also be explained.

(c) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be noted.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State is the least acceptable approach to providing this information. Local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market for placement.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in IV.c.5. above, each application for funds shall:

(a) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs, including, but not limited to:

(i) The JTPA grantee(s), especially the Title IV grantee;

(ii) Veterans' programs (including JTPA) available in the area;

(iii) The State Employment Service;

(iv) The unemployment compensation system, to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;

(v) The Pell Grant program; and

(vi) Other appropriate local program resources.

In those instances where JTPA title IV–A or Bureau of Indian Affairs funds, as well as other Federal funds, such as vocational education, economic development, or special appropriations, are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity shall be responsible for eligibility determination.

(b) Basic readjustment services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level);

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

Note: National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products, general employee upgrading, *etc.*

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e)).

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of all participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skill training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report required fiscal and management information.

(d) If the proposed grantee has been awarded a national reserve grant within the last 2 program years, the following information about each previous grant program experience shall be provided:

(i) The target group served;

(ii) Amount of the grant award;

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If the project is still in operation, provide expenditure data through most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(viii) The total number of placements and the placement rate (planned vs. actual).

(9) *A detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in Plate III is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I. Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989) shall be identified.

PLATE III—BUDGET

	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff salaries	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
● Rent	X	X	X		X
● Maintenance	X	X	X		X
● Utilities	X	X	X		X
(5) Consumable Office Supplies	X	X			X
(6) Consumable Instructional Materials		X	X		X
(7) Equipment	X	X	X		X
● Lease	X	X	X		X
● Purchase (Attach supplement/ narrative, listing and explaining each item leased and/or purchased $500 or over).	X	X	X		X
(8) Relocation (Section 314)		X	X		X
(9) Subcontracts					
● Tuition			X		X
● OJT wages			X		X
● Fixed Unit Price 20 CFR 629.38(e)(2)					
● Audit	X				
● Other (Identify)	X	X	X		X
(10) Supportive Services				X	X
● Needs Related payments				X	
● Child Care				X	
● Transportation				X	
● Other				X	
(11) Other (Identify)	X	X	X		X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "O".Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Where national reserve funds will be combined with funds from other sources—employer, union, State title III allocated, JTPA title IV–A, State vocational education, or economic development funds, *etc.*—the budget shall indicate for each line item, the total cost, the amount to be funded from the national reserve account and the amount to be funded from the other funding source(s).

(c) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds shall be allowed.

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative, they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for JTPA Title III national reserve funds shall be evaluated and selected for funding based on the following:

a. Overall criteria. (JTPA section 322(a)(3); 29 U.S.C. 1662b (a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need; and

(2) Promotes the effective use of funds.

b. Application Review.

(1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III,

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal,

(c) The application is not consistent with statutory, regulatory or application requirements, or

(d) The information regarding why the State or substate grantees under title III or the title IV–A grantee were unable to fund the proposed project is not provided.

c. Additional specific criteria for evaluation and selection of applications for Indian reservation dislocated Worker Projects.

(1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the reservation, local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities, JTPA title IV activities, and other JTPA programs, as well as TAA program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The Secretary shall also consider whether costs appear to be necessary and reasonable. 20 CFR 629.37(a). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application received by the Grant Officer.

8. Funding Mechanisms

The following apply.

a. (1) A grant agreement will be executed by the USDOL grant officer and the grant applicant's signatory official.

(2) The Act, regulations, grant document, grant award letter, grant application and any amendments approved by the DOL Grant Officer shall govern the operation of the project.

b. The effective date for the use of the funds shall be indicated in the grant document and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

D. Category IV—Emergency Dislocated Worker Projects

1. Determination That an Emergency Exists

For purposes of national reserve funds under title III of JTPA, two basic types of emergency dislocated worker projects shall be recognized. They are:

(a) Unexpected mass layoffs or plant shutdowns that create emergency situations. Such closings and layoffs include those created as a result of government action, and are where:

(1) The emergency nature of the sudden and unexpected dislocation event shall result in circumstances which do not provide a reasonable period of time to develop a full proposal;

(2) The number of dislocated workers who meet the eligibility criteria shall be such that the JTPA title III substate grantee, Indian title IV grantee and/or the State are unable to respond to the dislocation with existing resources; and

(3) The affected workers shall not have received a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff or plant closure.

(b) An emergency (and generally short-term layoff) caused by a natural disaster. The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a natural disaster constitutes an emergency requiring assistance with funds under JTPA Section 302(a)(2) for those areas that are distressed as a result of the natural disaster. 29 U.S.C. 1652(a)(2). Under such circumstances, the Secretary, with the Governor(s) of the principal State(s) affected, may determine to mount special programs to demonstrate that title III funds can be used to assist the affected communities. Such programs shall be designed to enable affected workers to return to their regular employment as soon as possible.

A principal strategy in this approach would be to develop special temporary jobs that would benefit the public. Such jobs shall be in public or private non-profit agencies for up to six months duration to assist in community repairs and cleanup, to enable resumption of regular employment. It is in the interest of the public and affected individuals that these jobs be filled as rapidly as possible. These jobs are to be filled consistent with section 301(a) of the Act. 29 U.S.C. 1651(a). Therefore, for purposes of eligibility for emergency jobs under these special programs, individuals who have become unemployed because of the natural disaster, shall meet the eligibility requirements.

An application for an Emergency Dislocated Worker Project shall be accompanied by the required certifications (See appendices A, B and C to this notice) and comply with the following requirements. Basically, the information for both types of emergency applications is the same. The following requirements specifically indicate where different information shall be provided.

(c) The determination that a situation or set of circumstances has resulted in a distressed area or industry which is appropriate for emergency funding may be initiated by either the Governor of the State where the emergency exists or by the Secretary.

2. Eligible Grant Applicants

Eligible grant applicants for such projects are 59 State JTPA grant recipient agencies under the Federal-State, Governor-Secretary Agreement ("State" as previously defined) as represented by the governor.

3. Eligible Subgrantees

Eligible subgrantees which may operate such a dislocated worker project include, but are not limited to, State agencies, JTPA Title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; Indian tribal entities; private non-profit organizations including community-based organizations, labor organizations, regional development councils, industry-sponsored associations; and private-for-profit entities.

4. Submission of an Application

a. Applications shall be transmitted with a letter from the Governor or the authorized JTPA State signatory official. The letter to request initial emergency funding (see 6.a. below) may be sent by telefacsimile (FAX), however an original signed request must be received by the grant officer before any funds shall be awarded.

b. The initial emergency application should normally be submitted within 15 days of the precipitating emergency event.

5. Assurances

a. The emergency application letter shall contain the following assurances:

If the proposed project is funded:

—The grantee assures that any Title III funds awarded from funds reserved by the Secretary shall be administered by the grantee in accordance with the initial and final proposals and any amendments thereto approved as by the Grant Officer, the Act, the JTPA regulations, and shall be consistent with the approval letter signed by the Department of Labor Grant Officer transmitting the grant award.

–The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

–The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

–Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

-The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—Based on the State's oversight authority, the State agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

6. Application Content

Emergency grants shall be funded following a two-step process. The first step shall be an initial request for funds which will contain relevant, but limited information. The second step shall be the fully documented proposal required for discretionary funds.

a. *Initial Request.* The State's initial request for funding should be brief and provide the following information. It shall not exceed two pages (plus the transmittal letter and the assurances). DOL will initiate the funding decision process upon receipt of a FAX.

The initial request must contain: (1) An explanation of the circumstances requiring the emergency funds;

(2) The areas to be served by the grant;

(3) A brief assessment of the need;

(4) An estimate of the number of workers whose employment is impacted by the emergency;

(5) A brief summary of the activities to be conducted. These activities must be allowable under Section 314 of the Act, 29 U.S.C. 1661. In the case of a natural disaster, temporary job creation may be permitted as a demonstration program under Section 324 of the Act (see 29 U.S.C. 1662(c), as discussed above). Wages paid for any temporary jobs created shall meet the requirements set forth in Section 142(a)(3) of the Act, 29 U.S.C. 1552(a)(3); and paragraph D.1.(b) above;

(6) An estimate of the number of participants to be served by the emergency grant request; participants shall be eligible pursuant to the definitions set forth at JTPA section 301(a), 29 U.S.C. 1661(a); and paragraph D. 1.(b) above;

(7) The grant applicant shall assure that no other JTPA, Federal, State or local funds are available to meet the identified need; and

(8) The total amount of funds requested. Where an emergency request is approved, the Department shall immediately release to the grantee up to one-third of the total funds requested for the emergency.

b. The Department shall review the material required to be submitted for an initial request and, based on that information and other information available to the Department, a decision whether to fund the emergency project shall be made.

c. Project plan. A fully documented proposal shall be submitted by the grantee and must be approved by the U.S. DOL before any additional funds for the approved grant shall be allocated to the grantee. The final amount to be approved shall be based on the fully documented proposal and other available information.

(1) The fully documented proposal for an emergency which was not the result of a natural disaster shall include the same items required for a dislocated worker project application as required by Section 6 of Category I, Application for Intrastate Dislocated Worker Project.

(2) The fully documented proposal for a natural disaster emergency to conduct only short-term emergency activities shall include:

(a) A period of performance not to exceed 9 months.

(b) A substantive description of the nature and extent of the emergency, including: (i) An estimate of the number of workers dislocated from their employment; (ii) the geographic location of the emergency; (iii) the area(s) where services and activities will be conductedifferent from the location of the emergency; and (iv) the projected immediate recovery period.

(c) A description of how the grantee will identify and recruit affected workers to be served under the project, and the total number of affected workers to be served.

(d) Services and activities. (i) A description of the types of services to be provided and the numbers of participants to receive various services under the short-term emergency response. This shall include the number of participants to be provided temporary jobs, the types and location of temporary jobs, a statement that the workers funded by the emergency grant are authorized to perform the temporary jobs, the wages (or wage range) to be paid in major job categories, and a description of the employers for such

jobs. Criteria used by the grantee in selecting such employers shall also be included. To the extent that regular employees of an employing unit (e.g., unit of government utilizing the emergency JTPA funds) have the authority to do the planned work, then so do the participants hired with the Title III emergency funds.

(ii) A description of how the grantee will select affected workers to fill any temporary jobs.

(iii) A monthly implementation schedule for each of the activities to be conducted.

(e) Administration. (i) Identification of the entity in the State that will be responsible for the overall administration of the emergency project.

(ii) A description of the monitoring plan for the project, the monitoring schedule and the steps that will be taken to ensure the integrity of project activities.

(f) Budget. (i) A line-item budget (see Plate IV) for JTPA national reserve funds by major activity that specifically reflects staff and other costs to be supported by the award in each of the cost categories. The Title III cost categories—Administration, Basic Readjustment Services, Retraining, and Participant Support Services including needs-related payments—shall be used in the proposal. Expenditures on temporary jobs for participants are to be included under the cost category of Retraining-natural disaster. The Title III cost limitations on Administration and Supportive services including needs-related payments shall apply.

(ii) A description of the relationship between JTPA funds and any other funds which may be available.

(3) Documentation in support of each emergency request, accompanied by a complete application for any balance of the available national reserve grant funds, shall be submitted within 60 days of receipt of the initial emergency award, unless the Governor and the Grant Officer have agreed to a different time frame.

d. Reporting and Oversight. (1)(a) The reporting of JTPA funds and activities shall reflect the budget categories and activities contained in the approved project proposal.

(b) The grantee shall submit a detailed report of the project no later than 45 days after the end of the project. The report shall contain the following information:

(i) Name and address of operator;

(ii) Period of performance;

(iii) Date of the emergency;

(iv) Location(s) of the emergency;

(v) Numbers of individuals affected;

(vi) Number of participants served (total and by activity), compared to planned numbers;

(vii) Number of participants who were employed in unsubsidized jobs at termination;

(viii) Number of participants who were receiving services not funded by this project at termination;

(ix) Expenditures (total and by cost category), compared to planned expenditures;

(x) Identification of jobs created under the project, and the number of participants in each; and

(xi) The average period of participation and wages received by the participants.

(c) The grantee also shall provide brief monthly cumulative reports on the number served, total expenditures and the number of monitoring visits conducted. These reports shall be submitted by the 10th of each month to the appropriate Department of Labor Regional office.

(2) The grantee shall assure that it will monitor on a regular basis and provide technical assistance to each subgrantee to ensure that:

(a) The objectives of the program are met;

(b) The jobs created are consistent with jobs specified by subgrantees;

(c) Time and attendance records are accurate; and

(d) The subgrantee is managing and operating its programs in accordance with the Act, the regulations, the provisions, terms, and conditions of the emergency grant and the grant award letter.

PLATE IV—BUDGET

	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff Salaries	X	X	X		X
Fringe Benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant).	X	X	X		X
(2) Staff Travel	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
● Rent	X	X	X		X
● Maintenance	X	X	X		X
● Utilities	X	X	X		X
(5) Consumable Office Supplies	X	X			X
(6) Consumable Instructional Materials		X	X		X
(7) Equipment	X	X	X		X
● Lease	X	X	X		X
● Purchase	X	X	X		X
(Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over).					
(8) Relocation (Section 314)		X	X		X
(9) Subcontracts					
● Tuition			X		X
● OJT wages			X		X
● Fixed Unit Price 20 CFR 629.38(e)(2)					X
● Audit	X				
● Other (Identify)	X	X	X		X
(10) Supportive Services				X	X
● Needs Related payments				X	
● Child Care				X	
● Transportation				X	
● Other				X	
(11) Other (Identify)	X	X	X		X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

7. Selection Criteria

Grant applications for JTPA Title III national reserve emergency funds shall be evaluated and selected for funding based on the following:

a. *Overall criteria.*

All fully documented emergency applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need,

(2) Promotes the effective use of funds, and

(3) Effectively responds to the emergency.

b. *Application Review.* JTPA section 322(a)(3); 29 U.S.C. 1662b(a)(3).

(1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of JTPA Title III; or

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal; or

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided, or

(d) The application is not consistent with statutory, regulatory or application requirements, or

(e) The Secretary does not agree that there is, in fact, an emergency situation.

c. *Additional specific criteria for evaluation and selection of applications for emergency dislocated worker plant closing/mass layoff projects.*

(1) Severity of need. The severity of the circumstances and need as described in the grant application) *e.g.*, when the layoff/shutdown occurred, the number of individuals affected, the local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target Group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities and other JTPA programs, as well as the TAA program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost Effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The Grant Officer shall also consider whether costs appear to be necessary and reasonable (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining the final funding level.

(7) Comments regarding the application submitted by the Governor or other interested parties.

(8) The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

d. *Additional specific criteria for evaluation of a fully documented application for Emergency Dislocated Worker Projects in response to a natural disaster.*

(1) Demonstrated need. The severity of the circumstances and need as described in the grant application (*e.g.*, the scope of the natural disaster, the projected short-term and long-term effect of events on unemployment, the plant closing(s) and other businesses affected permanently or for a long period of time, the number of workers affected, the increases in local and State unemployment rates, the number of disaster unemployment assistance claims).

(2) Target group. The identification of a specific target group(s) dislocated as a result of the natural disaster and based on the concentration of the eligible individuals in specific geographic areas, and, where appropriate, occupation(s), plant(s), or industry(ies).

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities and other JTPA programs as well as Federal Emergency Management Administration efforts where appropriate.

(4) Services. The services to be provided and the degree to which the services appear to meet the needs of the target population. The extent to which specific providers and occupations are identified as related to the community needs resulting from the disaster. Emergency jobs must be related to responding to public service needs.

(5) Management capability. Assurance of the project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability that program operations were began expeditiously.

(6) Cost Effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, expected wage levels and cost per activity in relation to services provided and where appropriate, the outcomes projected. The proportion of staff costs to those costs directly attributable to client services such as tools, wages and fringe for temporary jobs, tuition, *etc.* The Secretary shall also consider whether costs appear to be necessary and reasonable. (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining the final level of funding.

(7) Comments regarding the application submitted by the Governor or other interested parties.

(8) The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

8. Funding Mechanism

a. Initial emergency funding, not to exceed one-third of the total amount

initially approved for the grant award, may be made available based on the initial funding request and may be used to provide funds for project startup and early implementation costs, assessment, wages and fringe benefits for temporary jobs, and training costs. It is intended that enrollment and service provision shall begin during this initial funding period. JTPA funds shall not be used to fund activities traditionally and more appropriately funded by State, local, private or other Federal agencies.

b. A final funding level shall be determined based on review and approval of the fully documented proposal and the balance of the approved funding level will be issued as soon as possible following receipt of the fully documented proposal.

c. (1) In the case of emergency funding of a dislocated worker project, the Department shall issue a Notice of Obligation (NOO) for the initial title III national reserve funds awarded to the State, pursuant to the JTPA Governor/Secretary agreement. A second NOO shall be issued for the balance of funds following approval of the fully documented proposal.

(2) Grant award letters containing the specifications expected as a condition of the grant will accompany the NOOs.

(3) The grant award letters, the grant application and the assurances and any approved amendments, the Act, regulations and these guidelines will govern the operation of the project.

d. Unless otherwise directed, the effective date for the use of the funds will be the date of the grant award letter or grant document and no costs may be incurred against awarded funds prior to such date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated workers.

E. Category V—Additional Financial Assistance (AFA) to formula-funded programs and activities provided by State and substate grantees

(Section 323(a)(7); 29 U.S.C. 1662b(a)(7)). Such applications shall comply with the following.

1. Policy and Funding Requirements

a. The primary purpose of the national reserve account is to target funds to specific dislocation events. In administering the account it is the Department's intent to give top priority to proposals which are designed to target funds to such specific dislocations.

The Secretary may consider applications for title III national reserve funds to be used for on-going title III formula funded activities. Such applications shall be submitted only under unusual circumstances and shall be subject to the standards and requirements provided in this category. The Department expects States and substate grantees to plan and operate their programs within the constraints of their formula allotments. Operations shall not be conducted in a manner that anticipates national reserve account funds in order to sustain title III formula program operations.

The Department further expects States to utilize any additional funds provided for formula activities in accordance with the statutory requirements, including in particular an appropriate use of any additional funds for Rapid Response activities. The State is responsible for assuring that formula funds are available and used to provide Rapid Response to all appropriate plant closings and mass layoffs, including closings and layoffs where national reserve funds are provided to assist workers dislocated by such closings and layoffs.

b. Applications for national reserve account funds shall be subject to the following requirements:

(1) Requests submitted during the first six months of any program year must specifically identify all of the plant closings and mass layoffs that have or will occur that caused the increased unemployment generating the request, the geographic areas where the layoffs and closings have or will occur, the magnitude of the layoffs, the projected number of dislocated workers who will need and want EDWAA assistance as well as the other requirement provided for by this category. Proposals submitted during the final six months of a program year are not required to submit the specific information required by this paragraph, but must submit all other required information.

(2) A State may request additional formula funds only once each program year.

(3) The data used to support any request for additional formula funds shall be data for the most recent 12 month period for which data are available. Such a period shall be a 12 month period that is more recent than and does not include any part of the 12 month period used by the Department for the most recent formula allotment, or by the State for the most recent substate allotment.

(4) No State or substate area grantee shall be eligible if funds from that State were reallotted or funds from that substate area were reallocated the previous program year.

(5) No State or substate area grantee shall be eligible as long as there are unexpended funds subject to reallocation that shall not be expended by the end of the current program year.

(6) No State or substate area grantee may request funds just for a single activity such as administration or needs-related payments.

(7) (i) If the AFA application is for the State, the State shall demonstrate that, based on the statutory formula used to allot funds to the State (Section 302(b); 29 U.S.C. 1652(b)) for the program year(s) during which the additional formula funds shall be expended, there has been an increase of at least 20 percent in at least two of the funding formula factors: i.e., the relative number of unemployed individuals who reside in the State, as compared to the total number of unemployed individuals in all States; the relative excess number of unemployed individuals residing in the State; or the number of individuals who have been unemployed in excess of 15 weeks.

(ii) If the AFA application is on behalf of a substate area, the application must demonstrate that, based on the allocation formula prescribed by the Governor to distribute funds to the substate grantees (Section 302(d); 29 U.S.C. 1652(d)), for the program year(s) during which the additional formula funds shall be expended there has been an increase of at least 20 percent in at least two of the formula allocation factors, such as: The insured unemployment data; unemployment concentrations; plant closing and mass layoff data; declining industries data; farmer-rancher economic hardship data; or any other factor used by the State to distribute formula funds to address the State's worker adjustment assistance needs.

(8) No State or substate area grantee may receive additional formula funds from the reserve account to serve additional dislocated workers if the State or substate grantee is presently serving displaced homemakers with formula funds in the program year in which the application is submitted and/or the program year(s) in which the funds shall be expended (as a result of a determination that service to this additional dislocated worker group could be provided without adversely affecting the delivery of services to dislocated workers eligible for services under JTPA section 301(a)(1) (A) and (B); 29 U.S.C. 1651(a)(1) (A) and (B)).

(9) The Department shall evaluate the use of both the formula allotments and the reallocated funds in its funding

decision process when considering requests for additional formula funds.

2. Operational Requirements

a. These funds shall be treated the same as all other formula funds. If the State has applied for and is awarded additional "formula" funds, such funds shall be subject to the "forty percent/sixty percent" State and substate grantee distribution requirement (Section 302(c) (1); 29 U.S.C. 1652(c)(1)) and the statutory cost limitations. If the State has applied for and is awarded additional funds for a specific substate grantee, all such funds shall pass directly to the substate area and shall be subject to the statutory cost limitations. Additional funds awarded from the Secretary's reserve account are not subject to recapture and reallotment. Nevertheless, it is expected that these funds will be expended by the end of the program year following the program year in which they are awarded.

b. For purposes of tracking national reserve funds provided as additional formula funds, expenditures shall be reported by the grantee separately from other formula and national reserve funds.

c. In determining a State or substate area grantee's performance, expenditures and additional participants resulting from such funding shall be included in performance standard computations.

d. No eligible dislocated workers shall be simultaneously enrolled in formula funded title III activities and additional formula assistance activities.

3. Eligible Grant Applicants

The eligible grant applicants for additional formula funds are the States and territories of the United States (including the District of Columbia, the Freely Associated States of the Republic of Marshall Islands and the Federated States of Micronesia, and the Trust territory of the Republic of Palau), as represented by the governor designated, State JTPA grant recipient or grant administering agency under the Federal-State, Governor-Secretary Agreement.

4. Submission of Application

The Governor or authorized JTPA signatory for the State shall submit a national reserve application for additional financial assistance in support of title III formula-funded activities and programs provided by the State or substate area grantees to the DOL Grant Officer. The application shall be accompanied by the required certifications (see appendices A, B, and C to this notice) and the assurances listed below.

5. Assurances

Applications shall be transmitted with a letter from the Governor or authorized signatory containing the following assurances:

If the proposed request for additional financial assistance is funded:

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered in accordance with the Act, the JTPA regulations, the grant application approved by the Grant Officer, these guidelines and shall be consistent with the approval letter signed by the Department of Labor Grant Officer.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities, and

—Within 30 days of receipt of the grant approval, the grantee agrees to allocate the grant funds for additional financial assistance to the substate grantees in accordance with the Act, regulations, the proposal, and grant award letter.

6. Content of an Application

a. *Period of Award.* Applications shall cover a period of time not to exceed 12 months.

b. *Application narrative.* (1) Describe the substate area or areas for which the additional financial assistance is required including the projected number of participants served under the substate plan and the substate grantee's performance to date based on the services provided.

(2) Address why the need cannot be met by existing resources:

(a) Provide the status of fund availability (obligations and expenditures) for the State and substate grantee, where appropriate, as of the most recent quarter.

(b) Where appropriate, a statement from the State certifying that the substate grantee(s) funds have not been subject to reallocation.

(c) The State shall indicate that it has exercised State reallocation procedures and that no funds are available from either the 60 percent or 40 percent funds within the State.

(3) An explanation shall be submitted, stating how the circumstances under which State formula funds were provided, or under which the State allocated funds to the substate area(s), have substantially and significantly changed so as to justify the need for additional funds.

(a) When the State applies for these funds to serve the entire State, such circumstances must include an increase in mass layoffs or plant closings with accompanying numbers of dislocated workers which are at least 10 percent of the State labor force, or a 20 percent increase in at least two of the three statutory formula funding factors, i.e., the State's unemployment rate, the excess number of unemployed (in excess of 4.5 percent of the unemployed in the civilian labor force of the State), or the number of long-term unemployed individuals (unemployed in excess of 15 weeks). The 20 percent increase shall be an increase in the data for at least two of the factors used to determine the State's formula allotment for the program year during which the discretionary funds shall be expended. If more than one such program year is involved, it shall be the program year during which a majority of the funds will expended.

(b) When the State applies for AFA funds on behalf of a substate grantee, such circumstances shall include at least a 20 percent increase in the data for at least two of the factors (insured unemployment data; unemployment concentrations; plant closing and mass layoff data; farmer-rancher economic hardship data; and long-term unemployment data) used by the State to determine the substate area's formula allocation for the program year during which the discretionary funds shall be expended. If more than one program year is involved, it shall be the program year during which a majority of the funds shall be expended.

(4) A statement must be included providing information to indicate the severity of need for additional funds, such as the area unemployment rate, an analysis of unemployment insurance (UI) exhaustees, the proportion of unemployed workers who lack sufficient skills to remain in the labor force without assistance, etc.

(5) Include a brief description of the activity(ies) to be funded.

(6) Include an implementation plan which provides:

(a) A schedule for the implementation of proposed activities upon receipt of funds; and

(b) Quarterly implementation data showing the following cumulative projected data as appropriate: Enrollments by activity, total terminations, number of participants to enter employment and expenditures.

(7) Set forth planned outcomes, if appropriate, including: cost per participant, cost per entered employment, and entered employment rate. The actual data for the preceeding program year for formula programs shall also be included.

(8) A detailed line-item budget must be submitted. These funds are subject to the cost limitations found in section 315 of the Act (29 U.S.C. 1661(d) and are subject to the regulations found at 20 CFR 631.14. Line-item costs shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker Adjustment Program Quarterly Financial Report" (WQFR). (OMB Control No. 1205–0274)

(9) A statement must be included that no services to displaced homemakers have been or are being provided with formula funds currently available to the State and/or substate areas and no assistance shall be provided during the period of use of the additional formula assistance.

7. Selection criteria

The following criteria shall be used to evaluate proposals for additional formula funds:

a. A demonstration that State and substate grantee formula funds will not remain unexpended and that formula funds are not available to meet the need.

b. A demonstration that the circumstances under which State formula funds were provided or under which the State allocated funds to the substate grantee(s) have substantially and significantly changed so as to justify the need for additional funds.

c. The severity of circumstances and need in the State or substate area as described in the grant application.

d. The ability of the State or substate grantee(s) to utilize the funds provided immediately.

e. The cost effectiveness of the project or activity, including the extent to which other State and substate public and private resources, have been integrated into the proposed project or activity.

f. The extent to which the expenditure of funds will be directly for, or related to, the provision of services to participants.

g. The overall effectiveness and efficiency of the proposal itself.

h. The amount of the grant award in addition to relevant requirements above, shall take into consideration the State's proportionate share of the national workforce.

8. Funding Mechanism

a. (1) In the case of additional financial assistance to programs and activities provided by State or substate area grantees, the Department will issue a Notice of Obligation (NOO) of title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(2) A grant award letter containing the general specifications expected as a condition of the award will accompany the NOO.

(3) The Act, Regulations, grant award letter, the grant application, any approved amendments, the assurances and these guidelines shall govern the operation of the project.

b. The effective data for the use of the funds shall be the date indicated on the grant award letter and no costs may be incurred against awarded funds prior to such date. The authority to expend funds immediately is given in most cases to permit the most timely response to the need of the newly dislocated worker.

F. Category VI—Defense Conversion Adjustment Programs

An application for funds under this subpart shall comply with the following requirements:

Application Rules

a. Definitions.

In addition to or in lieu of the definitions contained and cited in § 631.2 of this part, the following definitions shall apply to programs funded under this subpart:

(1) "DoD" means the United States Department of Defense.

(2) "Industrywide project" means services and activities provided by a single grantee to serve workers dislocated from at least three different plants or facilities within the defense industry in at least two different areas of a single State or two different States.

(3) "Multistate project" means services and activities provided in more than one State by a single grantee to serve workers dislocated from one or more defense plants or facilities.

(4) "Substantially and seriously affected worker" means a member of any group of 100 or more workers at a defense facility who are, or who are expected to become, eligible to participate in the Defense Conversion Adjustment Program.

b. Participant eligibility.

(1) An eligible dislocated worker, as defined by Section 301(a) of the Act and § 631.3 of the regulations, shall be eligible for participation in activities under a defense conversion adjustment (DCA) program only if such dislocated worker has been terminated or laid off or has received a notice of termination or layoff as a consequence of reductions in expenditures by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities. Examples include terminations or layoffs, or notices thereof, as a result of a cancellation of or a reduction in a DoD contract for a product or service, where such cancellation or reduction is a result of a reduction in an expenditure by the United States for defense or by closure of a United States military facility.

(2) An eligible dislocated worker whose termination or layoff, or notice thereof, is not directly the consequence of reductions in expenditures by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities is not eligible for services under a DCA program, but may be eligible under the basic title III dislocated worker program.

c. Priority areas of service.

(1) Priority areas of service for DCA programs shall be those geographic areas that have, or are projected by the Secretary to have the greatest number of dislocated workers who meet the eligibility criteria for services as defined in b. above.

(2) In determining priority areas of service, the Secretary shall require applicants to submit documentation that supports that the workers to be served by the application will be or were in fact, dislocated due to:

(a) Proposed and actual closure(s) of, or substantial personnel reduction(s) in, military installation(s);

(b) Proposed or actual cancellation(s) of, or reduction(s) in, any contract(s) for products or services for the Department of Defense, where the proposed closure(s), cancellation(s) or reduction(s) will have a substantial impact on employment; and

(c) Other reductions in expenditures by the United States government for defense.

The DOL shall consult with and obtain agreement from the DoD regarding the adequacy of the documentation provided in the applications before making a final decision regarding the approval of the applications. The agreement from DoD will indicate that DoD concurs that the application will provide services to workers who meet the requirements under b. above.

d. Allowable activities.

(1) Allowable activities for DCA programs shall be those activities authorized by section 314 of JTPA, except as provided below.

(2)(a) Job search shall be an allowable activity only to assist a totally separated dislocated worker who meets the eligibility criteria under b. above in securing a job within the United States, and where it has been determined that the dislocated worker cannot reasonably be expected to secure suitable employment within the

commuting area in which the worker resides. Procedures for determining whether a dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the dislocated worker resides shall be described in the grant application and shall be subject to approval by the Secretary.

(b) The cost of job search for a dislocated worker who meets the eligibility criteria under b. above shall be an allowable readjustment cost, but shall not provide for more than 90 percent of the cost of necessary job search expenses, and may not exceed a total of $800, unless the need for a greater amount is justified in the grant application and approved by the Secretary.

(c) These requirements shall not apply to regular job development activities and services provided to an eligible participant within the commuting area within which the eligible participant resides.

(3)(a) Relocation shall be an allowable activity only where a dislocated worker who meets the eligibility criteria under b. above cannot reasonably be expected to secure suitable employment in the commuting area in which the dislocated worker resides and has obtained suitable employment affording a reasonable expectation of long-term employment in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences.

(b) The cost of relocation for a dislocated worker who meets the eligibility criteria under b. above shall not exceed an amount which is equal to the sum of 90 percent of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects, and a lump sum equivalent to three times such worker's average weekly wage. The maximum relocation allowable, however, shall not exceed $800 per participant, unless a greater amount is justified to the satisfaction of the Secretary in the grant application and is approved by the Secretary. Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

2. Eligible Grantee

(1) Funds available for a DCA program shall be awarded to eligible grantees in accordance with the requirements of the Act and regulations, and the procedures, criteria and process contained in these guidelines.

(2) Funds shall be distributed to eligible grantees in accordance with procedures specified in these applications.

(3) Eligible grantees for DCA programs shall be States, Title III substate grantees, employers, employer associations, and representatives of employees. (section 325(a)). However, a specific eligible grantee may not be an appropriate applicant for a particular project. Applicants will be considered given the nature and extent of the proposed project.

3. Submission of Applications

(a) Two types of applications may be submitted: Regular full applications, and emergency applications. Regular full applications shall follow the procedures and requirements as contained in this section and Sections 4 and 5.(a)(b)(c) and (d) below. Emergency applications shall be subject to the procedures and requirements contained in Section 5(e) below.

(b) In the case of a multistate or industrywide project, the applicant shall submit the application directly to the Department of Labor Grant Officer. In the case of an intrastate project, the Governor shall submit the application to the Grant Officer. Each application shall contain the required certifications and assurances listed in Section 4 below.

4. Assurances and Certifications

(a) The following assurances shall be included with each application:

If the proposed project is funded from funds provided to the Secretary of Labor by the Department of Defense:

—The grantee assures that such funds shall be administered by the grantee in a manner consistent with the Act, the JTPA regulations, the requirements contained in the application guidelines and in accordance with provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the Department of Labor Grant Officer.

—The grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the grantor as requested.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act, the Federal regulations for title III activities, and the requirements in the application guidelines.

—Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

Project proposals not accompanied by the above assurances shall not be accepted for review.

(b) Each application shall also contain the following certifications:

(i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a *copy* of the Statewide or agency plan every fiscal year per Training and Employment Information Notice (TEIN) No. 15–90. This certification requirement applies only to the Federal grant applicant. The "certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transaction", must be submitted with all national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying", as required by 29 CFR Part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

5. Application Content

Each application shall contain the following information in the format outlined below:

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the project.* A short summary of pertinent information regarding the project shall be included and shall contain the following:

(1) The name and address of the project operator, along with the name and telephone number of a contact person for the grantee and project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of National Defense Act national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the project operator.

d. *Project Narrative.* The project narrative shall be a detailed explanation containing the following information, and shall not exceed 25 pages:

(1) A description of the need for the project and an explanation of how this need was determined. The description shall include:

(a) Information that demonstrates that the employment losses are the result of reductions in DoD expenditures, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the workers reside. Specific information demonstrating what defense reductions occurred or will occur. Such information shall include specific identification of bases closed, contracts terminated, projects canceled, etc. If the dislocations are the result of the cancellation of a subcontract, the documentation should identify both the subcontract and the prime contract that resulted in the cancellation of employment. The procedures used to make this determination shall be briefly described.

(b) The schedule for layoffs and closings.

(c)(i) The number of affected workers likely to participate in the program, taking into consideration the total number of workers affected by specific occupations, the wage levels for each occupation, the number of workers eligible to participate, the number likely to retire, the number likely to be transferred, and the number likely to be recalled. Applicants shall certify that recall within the next 12 months is highly unlikely for these dislocated workers.

(ii) The number of affected workers who posses locally transferable skills, and who can be expected to find other employment with minimal or no assistance.

(iii) Where the layoff has occurred more than 4 months prior to the submittal of the application, information indicating how the applicant determined the number of affected workers who remain unemployed and in need of services, and

(d)(i) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(ii) Information on the economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each State and area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project, and

(iii) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and the State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* The project narrative shall explain why these dislocated workers cannot be served with existing resources, in particular State or substate grantee JTPA Title III formula funds.

(3) *Trade adjustment assistance (TAA) for workers under the Trade Act.* The application shall indicate whether an application has been made for TAA assistance, and if so, whether certification has been given or denied for Trade Adjustment Assistance for workers. If certification has been issued, provided petition number, if available.

When a target group is certified as eligible to receive Trade Adjustment Assistance (TAA) including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for Retraining. The request should provide an estimate of the number of workers to receive TAA-funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA-funded training should also be explained.

(4) *Employer/union assistance.* The project narrative shall explain in detail the nature and duration of any contractual obligation of, or any voluntary arrangements by the employer(s) or union(s) to provide training-related services to terminated employees. When applicable, severance pay arrangements shall be addressed.

(5) *Labor market information.* The project narrative shall contain a detailed discussion on available labor market data as it relates to the specific area in which dislocation services will be provided. Specific listings of demand occupations in the areas where the dislocated workers will be trained shall be included, as well as an explanation of how such occupations were identified. The narrative also shall contain a certification that the number of unemployed workers available for employment in the identified demand occupations for which retraining is planned is insufficient to meet the need.

(6) *Coordination and linkage.*

(a) *Governors and substate grantees.*

(i) The application shall include evidence that the Governor of each State and the appropriate title III grantee of each substate area in which a project site is proposed have been informed of such application and given an opportunity to comment on how the proposed project would affect workers in the State or substate area.

(ii) Letters from the appropriate Governors and substate grantees shall be included to document that the opportunity was provided for review

and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed project/subproject for that State as well as a description of the funding and assistance, if any, it will provide to the project/subproject. The substate area grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed project/subproject in the substate area, as well as a description of the funding and assistance, if any, it will provide to the project/subproject.

(b) *Private industry council (PIC)/ local elected official (LEO).* All grant applications shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(c) *Labor organizations.* All applications for dislocated workers projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers. Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(d) *Other.* (i) Each application shall show that the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including, but not limited to:

(aa) DoD Readjustment Program;

(bb) Veterans' programs (including JTPA, Title IV–C) available in the area;

(cc) Disabled Veterans Outreach Program (DVOP) and Local Veteran's Employment Representatives (LVER);

(dd) The Unemployment Compensation System;

(ee) The State Employment Service;

(ff) The Pell Grant program;

(gg) Other Federal programs;

(hh) The Trade Adjustment Assistance (TAA) program, if applicable; and

(ii) Other appropriate State and local program resources.

(iii) In those instances where State and other funds, such as vocational education, economic development, TAA, or special appropriations, are available to the project, the application shall include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of JTPA.

(7) *Description of services.* All applications shall include the description of services to be provided:

(a) *Intake and eligibility determination.* Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity shall be accountable for eligibility determination.

(b) *Basic readjustment services.* Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with retraining activities (assessment procedures shall include the capability to determine if a participant's reading skills are below the 8th grade level). See JTPA section 314(c), 29 U.S.C. 1661c(c).

(c) *Retraining services.* Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training.

Note: Funds provided to DOL by DoD for DCA programs shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, and other such changes. See JTPA section 314(d), 29 U.S.C. 1661c(d).

(d) *Participant supportive services.* Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments. See JTPA Section 314(e), 29 U.S.C. 1661c(e).

(8) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation. Enrollment of participants normally should occur no later than 90 days following the grant officer's authorization to incur costs against the funds awarded. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Projected quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site:

(i) Enrollments for each major activity: assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(9) *Planned outcomes.* The application shall include project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(10) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, the application shall include a two-page or less description of the fiscal and management capabilities of the prospective project operator, including how the prospective project operator (or the division which will have responsibility for this project) is or will be organized. The description shall include information demonstrating:

(a) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs; and

(b) The capability of the project operator to maintain and report as necessary required fiscal and management information.

(11) *Detailed line item budget.* (a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in plate V is recommended for utilization and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. Staffing costs shall be specifically identified. Training costs for off-the-shelf catalogue prices or which meet the requirements for acceptable fixed-unit price, performance based contracts as published in the Federal Register at 54 FR 10459 (March 13, 1989) shall be identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

(iii) For a pass through project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the

projected person-hours and functions to be performed.

PLATE V.—BUDGET

	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff Salaries	X	X	X		X
Fringe Benefits (Attach supplement/ narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant).	X	X	X		X
(2) Staff Travel	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
● Rent	X	X	X		X
● Maintenance	X	X	X		X
● Utilities	X	X	X		X
(5) Consumable Office Supplies	X	X			X
(6) Consumable Instructional Materials		X	X		X
(7) Equipment	X	X	X		X
● Lease	X	X	X		X
● Purchase	X	X	X		X
(Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over)					
(8) Relocation (Section 314)		X	X		X
(9) Subcontracts					
● Tuition			X		X
● OJT wages			X		X
● Fixed Unit Price 20 CFR 629.38(e)(2)					X
● Audit	X				
● Other (Identify)	X	X	X		X
(10) Supportive Services				X	X
● Needs Related payments				X	
● Child Care				X	
● Transportation				X	
● Other				X	
(11) Other (Identify)	X	X	X		X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the JTPA cost limitations. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources, e.g., other defense funds, employer or union training funds, State formula-allotted funds, State vocational education or economic development funds, the budget shall indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item.

(e) *Emergency application.* (1)(a) Applications for emergency funding consideration shall be submitted only to address situations where:

(b) The dislocations occur under circumstances which do not provide a reasonable period of time to develop a full proposal; that is a sudden and unexpected event;

(c) The number of dislocated workers who meet the eligibility criteria is such that both the JTPA title III substate grantee and the State are unable to respond to the dislocation with existing resources; and

(d) The workers did not receive a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff.

(2)(a) Emergency proposals shall be considered under a two-step process. The first step shall be an initial proposal request which shall contain limited key information. The second step, which will be necessary only where there is a decision made by the Secretary to approve the initial request, shall be the fully documented proposal. An applicant may also, if it so wishes, submit a fully documented proposal where the Secretary determines not to approve an initial emergency proposal.

(b) The applicant's initial proposal request shall not exceed two pages (plus the transmittal letter and the assurances and certifications). This initial request may be submitted by FAX. An original signed request must also be submitted, and must be on file in the Department before any funds shall be released. The initial request shall contain:

(i) An explanation of the circumstances justifying the proposal to be submitted as an emergency request;

(ii) The areas to be served by the grant;

(iii) A brief assessment of the need, including the procedures used to determine that there are limited prospects for reemployment in a similar industry or occupation within the commuting area in which the affected workers reside;

(iv) An estimate of the number of individuals impacted by the emergency who meet the eligibility criteria under this subpart;

(v) An estimate of the number of individuals to be served by the grant;

(vi) The amount of funds being requested;

(vii) A brief summary of the activities to be conducted;

(viii) A statement that demonstrates the employment losses are the result of reductions in DoD expenditures, and

that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the worker resides. Specific information demonstrating what defense reduction(s) occurred shall be provided (see 5.(d)(1)(a) above); and

(ix) The assurances and certifications specified in section 4.

(3) A full proposal shall be submitted where the Grant Officer approves an initial proposal request. The full proposal shall be submitted in accordance with the requirements contained in the award letter responding to the initial proposal request and the procedures and requirements contained in Section 5. (a), (b), (c) and (d) above. The full proposal shall be reviewed following established procedures for the selection, review and approval of discretionary grant applications as contained in Sections 6, 7 and 8.

(4)(a) If a decision is made to fund a proposal, an amount, not to exceed one-third of the request, shall immediately be made available to commence operations allowable under the Act, regulations, the requirements and instructions contained in this document, and the grant officer approval letter, and

(b) Once the fully documented proposal has been reviewed, the Department shall determine how much, if any, additional funds to provide. The final amount provided, when combined with the initial amount awarded, shall not exceed the total initial request.

6. Selection Criteria

These criteria shall be used to determine the acceptability of the fully documented proposal and the final award amount for any already approved emergency award. These criteria shall also be used to determine whether awards shall be made in all other cases.

(a) *Overall criteria.* Grant applicants for funds under this subpart shall be evaluated and selected for funding where DoD has concurred that the dislocated workers to be served by the program described in the application, as documented by the information required in 5.(d)(1)(a), shall be or were dislocated as a result of DoD expenditure reductions and based on the extent to which the proposed project:

(1) Demonstrates that the proposal meets the requirements for this category;

(2) Demonstrates that the proposal meets the purposes of the Act and the regulations;

(3) Will encourage an effective response to the dislocations;

(4) Promotes an effective use of funds; and

(5) Provides all information as required for a proposal.

(b) *Specific criteria.* The following specific criteria shall apply to the evaluation of applications and selection of grantees for DCA dislocated worker projects;

(1) *Priority area.* The Secretary shall determine whether this application will serve eligible dislocated workers in a priority area of service as defined by section 1.d.

(2) *Severity of need.* The Secretary shall consider the severity of the circumstances and need, as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, and the local and State unemployment rates compared to the national rates).

(3) *Target group.* The Secretary shall consider the concentration of the eligible individuals in a specific occupation(s), plant(s), or geographic area(s). The Secretary shall consider the extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force, as shown by an analysis of the characteristics of the affected workers. The requirements of this paragraph shall be a major factor in determining the responsiveness of a proposal.

(4) *Coordination and linkages; utilization of resources.* The Secretary shall consider the extent to which the applicant has demonstrated that the project will be integrated with other existing program and community resources, including Defense Adjustment programs, State/substate JTPA Title III formula-funded activities other JTPA programs where appropriate, welfare programs, and the Trade Adjustment Assistance program, where appropriate.

(5) *Services.* The Secretary shall consider the services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population; and the extent to which specific occupations are identified for retraining and placement. The applicant shall demonstrate that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting or both. This demonstration shall be a major factor in determining whether to fund the application.

(6) *Management capability.* The application shall contain assurance of the project operator's fiscal and program management capabilities to administer the proposed project. The Secretary shall consider the project operator's demonstrated ability to begin program operations expeditiously in making a funding decision.

(7) *Cost effectiveness.* The Secretary shall consider the cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels; the level of funding designated for client services as opposed to staff support and administration; the proportion of staff costs to those costs directly attributable to client services such as tuition, and tools. The Secretary shall also consider whether costs are necessary and reasonable. The cost effectiveness of the project shall be a major factor in determining whether to fund the application.

(8) *Other considerations.* The Secretary shall consider the overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(9) The Secretary shall consider written comments regarding the application submitted by the Governor or other interested parties.

(10) The Secretary shall consider the comments of DoD as to whether this application shall serve eligible workers dislocated as a result of reductions in Defense procurements and base closings.

7. Application Review

(a) An application shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(b) Applications shall be rejected when:

(1) The application proposes to assist workers who were not dislocated as a result of reductions in defense spending or military base closings; (DoD comments shall be used for this determination) (Projects not considered for funding for this subcategory for this reason shall be automatically considered for funding with regular Title III discretionary funds);

(2) The application does not meet the standards established by these requirements;

(3) Other available applications appear to be more effective in achieving the goals of this category;

(4) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(5) The information regarding why the State and substate grantee were unable

to fund the proposed project is not provided or is unsatisfactory; or

(6) The application is not consistent with statutory and/or regulatory requirements.

8. Approval

(a) In the case of an award to a State or to an existing State JTPA substate area grantee, the Grant Officer shall issue an award letter and Notice of Obligation (NOO) pursuant to the Secretary/Governor Agreement. For others, an appropriate grant document shall be executed by the appropriate Department of Labor Grant Officer and the grant applicant's official signatory.

(b) The Act, JTPA regulations, these requirements, the grant award letter/agreement, assurances, grant application and any approved amendments thereto, and the approval by the Grant Officer in writing shall govern the operation of the project.

(c) The effective date for the use of the funds shall be the date of the grant award letter or grant agreement authorizing costs to be incurred against the funds awarded. No costs may be incurred against awarded funds prior to such date. The authority to incur costs immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker. Where authority to immediately incur costs is not provided, specific instructions will be included in the Grant Officer's award letter regarding the actions needed in order to obtain authority to incur costs.

Signed at Washington, DC, this 23rd day of June, 1992.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A Certification Regarding Drug-Free Workplace Requirements

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

Name of Applicant OrganizationQ02

_____

Name and Title of Authorized Signatory

_____

Signature

_____

Date

Appendix B

Certification Regarding Debarment, Suspension, and other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, § 98.510, Participants' responsibilities.

(Before signing certification, read attached instructions which are in integral part of the certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of Applicant Organization

_____

Name and Title of Authorized Signatory

_____

Signature

Date _____

Appendix C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the

making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant local, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL–A, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Applicant Organization

Name and Title of Authorized Signatory

Signature

Date

Note: In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over $100,000 (per OMB).

Appendix D

SF 424–B

Assurances—Non-Construction Programs

Note: Certain of these assurances not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified. As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 36–01 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the national Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205)

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*)

14. Will comply with Public Law 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

[FR Doc. 92-15457 Filed 7-8-92; 8:45 am]

BILLING CODE 4510-30-M

federal register

Thursday
July 9, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Resolution Amending the Southern Ute Tribal Liquor Code; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Resolution Amending the Southern Ute Tribal Liquor Code

June 15, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 88–103, amending the Southern Ute Indian Tribal Liquor Ordinance, was duly adopted by the Southern Ute Tribal Council on July 27, 1988. The Ordinance provides for the regulation of the sale, possession, consumption, distribution and manufacture of liquor in the area of Indian Country under the jurisdiction of the Southern Ute Tribe, Colorado and amends the previous Southern Ute Tribal Liquor Ordinance which was published in the **Federal Register** on January 28, 1970, 35 FR 1118.

DATES: This Ordinance is effective as of July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2612–MIB, Washington, DC 20240–4001; telephone (202) 208–4400, (FTS) 268–4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Southern Ute Indian Tribal Council declares that it is in the best interest of the Southern Ute Indian Tribe that alcoholic beverages and fermented malt beverages shall be sold within the exterior boundaries of the Southern Ute Indian Reservation only by persons licensed as provided in Title XVI. The Tribal Council further declares that it is lawful to sell alcoholic beverages and fermented malt beverages within the exterior boundaries of the Southern Ute Indian Reservation subject to the provisions of this Title. This title shall be deemed an exercise of the police powers of the Southern Ute Indian Tribal Council for the protection of the peace, safety, property, health and general welfare of the Southern Ute Indian Tribe.

Section 2. Definitions

As used in this title, unless the context otherwise requires:

A. "Adult" means a person lawfully permitted to purchase alcoholic beverages or alcoholic liquors.

B. "Alcoholic beverages" or "alcoholic liquors" means malt, vinous, or spirituous liquors.

C. "Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent and not more that three and two-tenths percent alcohol by weight.

D. "Hotel" means any establishment with five or more sleeping rooms for the accommodation of guests and having restaurant facilities.

E. "License" means to grant a licensee to sell alcoholic beverages as provided by this title.

F. "Licensed premises" means the premises specified in an application for a license under this title which are owned or in possession of the licensee within which such licensee is authorized to sell, dispense, or serve alcoholic beverages in accordance with the provisions of this title.

G. "Location" means a particular parcel of land that may be identified by an address or by other descriptive means.

H. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water containing more than three and two-tenths percent of alcohol by weight.

I. "Meal" means a quantity of food of such nature as ordinarily consumed by an individual at regular intervals for the purpose of sustenance in any facility where meals are regularly served at tables or lunch counters, or in any guest room of a hotel where the guest has meals served.

J. "Neighborhood" means that geographic area determined at the discretion of the Tribal Council to be affected by a license as proposed to be issued under this Title.

K. (1) "Optional premises" means:

(a) The premises specified in an application for a hotel and restaurant license under this title with related outdoor sports and recreational sports and recreational facilities for guests or the general public located on or adjacent to the hotel or restaurant within which such licensee is authorized to sell or serve alcoholic beverages in accordance with the provisions of this title and at the discretion of the Tribal Council; or

(b) The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility.

(2) For purposes of subsection (K), "outdoor sports and recreational facility means a facility which charges a fee for the use of such facility.

L. "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of them.

M. "Premises" means a distinct and definite location which may include a building, a part of a building, a room, or any other definite contiguous area.

N. "Restaurant" means an establishment, which is not a hotel as defined in subsection (D) of this section, provided with special space, sanitary kitchen and dining room equipment, and persons to prepare, cook, and serve meals, where, in consideration of payment, meals, drinks, tobaccos, and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobaccos and candies. Any establishment connected with any business wherein any business is conducted, excepting the sale of food, drinks, tobaccos, candies, or hotel business, is declared not to be a restaurant. Nothing in this subsection (N) shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, and amusement devices which pay nothing of value and cannot by adjustment be made to pay anything of value or other forms of entertainment commonly provided in restaurants.

O. "Retail liquor store" means an establishment engaged only in the sale of malt, vinous, and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises, and in the sale of tobaccos, tobacco products, smokers' supplies, and nonfood items related to the consumption of such beverages.

P. "Sealed containers" means any container or receptacle used for holding liquor, which container or receptacle is corked or sealed with any stub, stopper, or cap.

Q. "Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for except through a licensee licensed under this title; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess or transport in contravention of this title; to traffic in for any consideration promised or obtained, directly or indirectly.

R. "Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol. Any liquid or solid containing beer or wine in combination with any other liquor shall not be construed to be malt or vinous but shall be construed to be spirituous liquor.

S. "Tavern" means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

T. "Tribal Council" means the Tribal Council of the Southern Ute Indian Tribe or such Tribal Council's delegate.

U. "Vinous liquors" means wine and fortified wines which contain not less than one-half of one percent and not more than twenty-one percent of alcohol by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

Section 3. Licensing Authority of Southern UTE Indian Tribal Council

A. For the purpose of regulating and controlling the licensing of the distribution and sale of alcoholic beverages and fermented malt beverages, the Tribal Council shall be empowered to:

(1) Grant or refuse licenses for the sale of alcoholic beverages and fermented malt beverages, as provided by this title, and suspend or revoke such licenses upon a violation of this title or any other rule or regulation adopted pursuant to this title;

(2) Make such general rules and regulations and special rulings and findings as are necessary for the proper regulation and control of the distribution and sale of alcoholic beverages and fermented malt beverages and the enforcement of this title and alter, amend, repeal, and publish the same from time to time;

(3) Hear and determine at public hearing all complaints against any licensee and administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing so held;

(4) Keep complete records of all acts and transactions of the Tribal Council regarding alcoholic beverage licensees and fermented malt beverages licensees, which records, except confidential reports obtained from the licensee showing the sales volume or quantity of liquor sold or customers served, shall be open for inspection by the public.

(5) Suspend or revoke any license issued upon any violation by the licensee or by any agent, servant, or employee of such licensee of any provision of this title, or of any rule or regulation of the Tribal Council made pursuant to this title, or of any term, condition, or provision of the license issued by the Tribal Council upon its own motion or upon complaint, after investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard;

Not by way of limitation, the rules and regulations made pursuant to paragraph (2) of this section may cover the following subjects: Compliance with or enforcement or violation of any law, provision of this title, rule, or regulation issued pursuant to this title; specifications of duties of officers and employees of the Tribe regarding licensing; instructions for local law enforcement officers; all forms necessary or convenient in the administration of this title, inspections, investigations, searches, seizures, and such activities as may become necessary; limitation of the number of licensees as to any area or vicinity; misrepresentation and unfair practices; unfair competition; control of signs and other displays on licensed premises; identification of licensees and their employees; transportation; health and sanitary requirements; standards of cleanliness, orderliness, and decency; sampling and analysis of products; standards of purity and labeling; records to be kept by licensees and availability thereof; and any other matters deemed necessary for the fair, impartial, stringent, and comprehensive administration of this title, but nothing in this title shall be construed as delegating to the Tribal Council the power to fix prices. All rules shall be reasonable and just.

B. In any hearing held by the Tribal Council pursuant to this title, no person may refuse upon the request of the Tribal Council to testify or provide other information on the ground of self-incrimination; but no testimony or other information relating to this title produced in said hearing or any information directly or indirectly derived from such testimony or other information may be used against such person in any criminal prosecution based on a violation of this title except a prosecution for perjury. Continued refusal to testify or provide other information shall constitute grounds for suspension or revocation of the license granted pursuant to this title.

Section 4. Duties of Inspectors and Police Officers

A. The inspectors of the Tribal Council, while actually engaged in performing their duties and while acting under proper orders or regulations issued by the Tribal Council, shall have and exercise all the powers vested in peace officers. In the exercise of their duties, such inspectors shall have the power to arrest. Such inspectors shall also have the authority to issue summons for violations of the provisions of this title.

B. It is the duty of all tribal police to enforce the provisions of this article and the rules and regulations made pursuant to this title and to arrest and complain against any person violating any of the provisions of this title or rules and regulations made pursuant to this title.

Section 5. Exemptions

A. The provisions of this title shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.

B. (1) Any provision of this title to the contrary notwithstanding, when permitted by federal law and rules and regulations promulgated pursuant thereto, a head of a family may produce for family use and not for sale of such amount of malt or vinous liquor as is exempt from the federal excise tax on such liquors when produced by a head of a family for family use and not for sale.

(2) The production of malt or vinous liquors under the circumstances set forth in this subsection (B) shall be in strict conformity with federal laws and rules and regulations issued pursuant thereto.

(3) The producer of malt or vinous liquors pursuant to the provisions of this subsection (B) shall not be required to obtain any license provided by this title.

Section 6. Jurisdiction

The provisions of this title apply to any relevant act or transaction within the exterior boundaries of the Southern Ute Indian Reservation except to the extent that the exercise of that jurisdiction is prohibited by federal law.

Article II: Retail Sales of Alcoholic Beverages

Section 1. Licensing—General Provisions

A. Before granting any license, the Tribal Council shall consider, except where this article specifically provides otherwise, the reasonable requirements of the neighborhood, the desires of the

adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions which are or may be placed upon the neighborhood by the Tribal Council.

B. The Tribal Council shall not consider an application for any license to sell alcoholic beverages at retail if, within the two years before the date of the application, the Tribal Council has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the existing outlets.

C. The Tribal Council shall not consider an application to sell alcoholic beverages until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises, or by virtue of ownership thereof.

D. The Tribal Council shall not consider an application to sell alcoholic beverages for a location in an area where the sale of alcoholic beverages as contemplated is not permitted under the applicable zoning laws.

E. No licenses shall be refused arbitrarily or without good cause, and any such refusal may be reviewed upon application for judicial review to the Tribal Court.

F. All licenses granted pursuant to this article shall be good for one year from the date of issuance unless revoked or suspended pursuant to section 12 of this article.

G. Ninety days prior to the expiration date of an existing license, the Tribal Council shall notify the licensee of such expiration date by first class mail at the business' last known address. Application for the renewal of an existing license shall be made to the Tribal Council not less than forty-five days prior to the date of expiration.

No application for renewal of a license shall be accepted by the Tribal Council after the date of expiration. The Tribal Council may, for good cause, waive the time requirements set forth in this subsection. The Tribal Council may cause a hearing on the application for renewal to be held. No renewal hearing provided for by this paragraph shall be held by the Tribal Court until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days prior to the hearing and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The Tribal Council may refuse to renew any license for good cause, subject to judicial review. Any renewal hearing held by the Tribal Council shall be pursuant to section 3 of this article.

H. Each license issued under this article is separate and distinct, and it is unlawful for any person to exercise any of the privileges granted under any license other than that which he holds or for any license to allow any other person to exercise such privileges granted under this license. A separate license shall be issued for each specific business or business entity and each geographical location, and in said license the particular liquors which the applicant is authorized to sell shall be named and described. For purposes of the section, a resort complex with common ownership, a hotel and restaurant licensee with optional premises, and an optional premise licensee for optional premises located on an outdoor sports and recreational facility shall be considered a single business and location. At all times a licensee shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other arrangement for possession of such premises.

I. All licenses granted and issued pursuant to this article shall specify the date of issuance, the character and kind of license, the date of its expiration, the name of the licensee, and the place where the license is to be exercised.

J. Licenses granted and issued pursuant to this article shall at all times be conspicuously placed in the licensed premises where the said license is exercised and used.

K. If the place where the license is to be exercised is changed, a permit for this change must be obtained from the Tribal Council and conspicuously placed at all times in the place of business of the licensee.

L. (1) No license granted under the provisions of this article shall be transferable except as provided in this subsection (L), but this shall not prevent a change of location as provided in section 12(B)(6) of this article.

(2) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.

(3) For any other transfer of ownership, application shall be made to the Tribal Council on forms prepared and furnished by the Tribal Council. In determining whether to permit a transfer of ownership, the Tribal Council shall consider the requirements of section 5 of this article. The Tribal Council may cause a hearing on the application for transfer of ownership to be held. No hearing provided for by this paragraph shall be held by the Tribal Council until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the Tribal Council shall be pursuant to section 3 of this article.

M. A licensee shall report each transfer or change of financial interest in the license to the Tribal Council within thirty days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of such stock totalling less than ten percent in any one year, but any transfer of a controlling interest shall be reported, regardless of size. It is unlawful for the licensee to fail to report a transfer as required by this subsection. Failure to report a transfer shall be grounds for suspension or revocation of the license.

N. Each licensee holding a tavern license or racetrack license shall manage such premise himself or employ a separate and distinct manager on the premises and shall report the name of the manager to the Tribal Council. Such licensee shall report any change in managers to the Tribal Council within thirty days after the change. It is unlawful for the licensee to fail to report the name of or any change in managers as required by this subsection (N). Such failure to report shall be grounds for suspension of the license.

O. Licensees at facilities owned by the Tribe shall be regulated pursuant to guidelines established by the Tribal Council. In the absence of such guidelines, the provisions of this article shall apply to licensees at facilities owned by the Tribe.

P. In computing any period of time prescribed by this article, the date of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

Section 2. Application to Tribal Council for License

A. Applications for licenses under the provisions of this article shall be made to the Tribal Council on forms prepared and furnished by the Tribal Council and shall set forth such information as the Tribal Council may require to enable the Tribal Council to determine whether a license should be granted. Such

information shall include the name and address of the applicant, and if a partnership, also the names and addresses of all the partners, and if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer together with all the other information deemed necessary by the Tribal Council. Each application shall be verified by the oath or affirmation of such person or persons as the Tribal Council may prescribe.

B. Each application for a license filed with the Tribal Council shall be accompanied by an application fee in an amount determined by the Tribal Council to cover actual and necessary expenses subject to the following limitations:

(1) For a new license, not to exceed four hundred fifty dollars;

(2) For a transfer of location or ownership, not to exceed two hundred dollars.

(3) For a renewal of license, not to exceed fifty dollars.

These fees are separate and distinct from the fee charged in section 11 of this article.

C. The applicant shall file at the time of application plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. In its discretion, the Tribal Council may impose additional requirements necessary for the approval of the application.

Section 3. Public Notice—Posting and Publication

A. Upon receipt of an application, except an application for renewal or for transfer of ownership, the Tribal Council shall schedule a public hearing upon the application not less than thirty days from the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation on the reservation.

B. Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice president, secretary, and manager or other managing officers.

C. Notice given by publication shall contain the same information as that required for signs.

D. If the building in which the liquor is to be sold is in existence at the time of the application, any sign posted as required in subsections (A) and (B) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

E. (1) At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and to cross examine witnesses.

(2) As used in this subsection (E), "party in interest" means any of the following:

(a) The applicant;

(b) An adult resident of the neighborhood under consideration;

(c) The owner or manager of a business located in the neighborhood under consideration;

(d) The principal or representative of any school located within five hundred feet of the premises for which the license is under consideration.

(3) The Tribal Council, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

(4) Nothing in this subsection (E) shall be construed to prevent a representative of an organized neighborhood group which encompasses part or all of the neighborhood under consideration from presenting evidence subject to this section. Such representative shall reside within the neighborhood group's geographic boundaries and shall be a member of the neighborhood group. Such representative shall not be entitled to cross-examine witnesses or seek judicial review of the Tribal Council's decision.

Section 4. Results of Investigation—Decision of Authorities

A. Not less than five days prior to the date of hearing, the Tribal Council shall make known its findings based on its investigation in writing to the applicant and other interested parties. The Tribal Council has authority to refuse to issue any license for good cause, subject to judicial review.

B. Before entering any decision approving or denying the application, the Tribal Council shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, the number, type, and availability of liquor outlets located in or near the neighborhood under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. In investigating the qualifications of the applicant or a licensee, the Tribal Council may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Tribal Council takes into consideration information concerning the applicant's criminal history record, the Tribal Council shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license. Additionally, a representative of the Tribal Council may visit and inspect the property in which the applicant proposes to conduct such business.

C. Any decision of the Tribal Council approving or denying an application shall be in writing stating the reasons therefor, within thirty days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the Tribal Council after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the provisions

of this article, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

Section 5. Persons Prohibited as Licensees

A. No license provided by this article shall be issued to or held by:

(1) Any person until the annual fee therefor has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors, or stockholders holding over ten percent of the outstanding and issued capital stock thereof are not of good moral character;

(4) Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the Tribal Council;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, or any of its inspectors or employees;

(7) Any person unless he is with respect to his character, record, and reputation satisfactory to the Tribal Council.

B. No license provided for by this article shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred feet from any public or parochial school or the principal campus of any college, university; except that this provision shall not apply to a liquor license in effect and actively doing business before said principal campus was constructed.

Section 6. Refusal of License

The Tribal Council shall refuse to grant a license if the premises on which the applicant proposes to conduct its business do not meet the requirements of this article, or if the character of the applicant or its officers or directors is such that violations of this article would be likely to result if a license were granted, or if in its opinion licenses already granted for the particular locality are adequate for the reasonable needs of the community.

Section 7. Judicial Review

Any person applying to the Tribal Court for a review of any Tribal Council decision shall apply for review within thirty days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the Tribal Council when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Tribal Council pursuant to court order. The Tribal Court shall determine by clear and convincing evidence whether said refusal was arbitrary and without good cause, and, if so finding, said court shall order the Tribal Council to issue said license.

Section 8. Records—Inspection

Each licensee shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the business transactions of such licensee, all of which shall be open at all times during business hours for the inspection and examination of the duly authorized representative of the Tribal Council. The Tribal Council may require any licensee to furnish such information as it considers necessary for the proper administration of this article, and may require an audit to be made of such books of account and records on such occasions as it may consider necessary by an auditor to be selected by said Tribal Council who shall likewise have access to all books and records of such licensee, and the expense thereof shall be paid by said licensee.

Section 9. Suspension and Revocation

A. In addition to other penalties prescribed by this article, the Tribal Council has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or of anyof the rules or regulations authorized pursuant to this article, or of any the terms, conditions, or provisions of the license issued by such authority. Conviction of a violation of this article or any of the rules and regulations authorized and adopted pursuant to this article shall be grounds for, but shall be required prior to, such a suspension or revocation.

In addition, the Tribal Council, in its discretion, may revoke or elect not to renew a retail license if it determines that the licensed location has been inactive, without good cause, for at least one year or, in the case of a retail license approved for a facility which has not been constructed, such facility has not been constructed and placed in operation within two years of approval of the license application or construction of the facility has not commenced within one year of such approval.

B. Notice of suspension or revocation, as well as any required notice of a hearing, shall be given by mailing the same in writing by registered mail, return receipt requested, to the licensee at the address contained in such license. Any license may be temporarily suspended by the Tribal Council without notice pending any prosecution, investigation, or public hearing.

C. Nothing in this article shall prevent summary suspension of such license for a period not exceeding fifteen days. No suspension under this section shall be for a period longer than six months.

D. Whenever any license is suspended or revoked, no part of the fee paid therefor shall be returned or refunded to the holder of such license.

Section 10. Classes of License

A. The licenses to be granted and issued by the Tribal Council pursuant to this article shall be as follows:

(1) *Retail liquor store license.* A retail liquor store license shall be issued to persons selling alcoholic beverages in sealed containers not be consumed at the place where sold. Alcoholic beverages in sealed containers shall not be sold at retail other than in retail liquor stores. In addition, retail liquor stores may sell nonfood items related to the consumption of such liquors. Nothing in this section shall prohibit a retail liquor store licensee, at the option of the licensee, from displaying promotional material furnished by a manufacturer or wholesaler, which material permits a customer to purchase other items from a third person if the retail liquor store licensee does not receive payment from the third person and if the ordering of the additional merchandise is done by the customer directly from the third person.

(2) *Hotel and restaurant license.* (a) A hotel and restaurant license shall be issued to persons selling malt, vinous, and spirituous liquors in the place where such liquors are to be consumed subject to the following restrictions:

(i) Restaurants shall sell malt, vinous, and spirituous liquors as provided in this section only to customers of such restaurant and only if meals are actually and regularly served and provide not less than twenty-five percent of the gross income of the business of the licensed premises.

(ii) Hotels shall sell malt, vinous, and spirituous liquors as provided in this

section only to customers of said hotel and, except in hotel rooms, only on the licensed premises where meals are actually and regularly served and provided not less than twenty-five percent of the gross restaurant income of the business of the licensed premises.

(b) Notwithstanding any provision of this article to the contrary, a hotel, licensed pursuant to this article may furnish and deliver complimentary alcoholic beverages in sealed containers for the convenience of its guests.

(c) It is the intent of this section to require hotel and restaurant licenses to maintain a bona fide restaurant business and not a mere pretext of such for obtaining a hotel and restaurant license.

(d) Each hotel and restaurant license shall be granted for specific premises, and optional premises approved by the Tribal Council, and issued in the name of the owner or lessee of the business.

(e) Each hotel and restaurant licensee shall himself manage or have a separate and distinct manager and shall register the manager of each liquor-licensed premises with the Tribal Council. No person shall be a registered manager for more than one hotel and restaurant license.

(f) The registered manager for each hotel and restaurant license or the hotel and restaurant licensee shall purchase alcoholic beverages for one licensed premises only, and such purchases shall be separate and distinct from purchases for any other hotel and restaurant license.

(g) When a person ceases to be a registered manager of a hotel and restaurant license, for whatever reason, the hotel and restaurant licensee shall notify the licensing authorities within five days and shall designate a new registered manager within thirty days.

(h) The Tribal Council may refuse to accept any person as a registered manager unless he is satisfactory to the Tribal Council as to his character, record, and reputation. In determining a registered manager's character, record, and reputation, the Tribal Council may have access to criminal history record information furnished by an appropriate criminal justice agency subject to any restrictions imposed by such agency.

(3) *Tavern license.* A tavern license shall be issued to persons selling malt, vinous, or spirituous liquors by the drink only to customers for consumption on the premises, and such licensee shall have available for consumption on the premises during business hours sandwiches and light snacks, but he need not have meals available for consumption.

(4) *Racetrack license.* A racetrack licensee may sell malt, vinous, and spirituous liquors by the drink for consumption on the licensed premises only to customers of such racetrack and shall serve food as well as such liquors.

(5) *Optional premises license.* An optional premises license shall be granted for optional premises approved by the Tribal Council to persons selling malt, vinous, and spirituous liquors by the drink only to customers for consumption on the optional premises and for storing malt, vinous, and spirituous liquors in a secure area on or off the optional premises for future use on the optional premises.

Section 11. License Fees

A. The following license fees shall be paid to the Finance Officer of the Southern Ute Indian Tribe annually in advance:

(1) For each retail liquor store license, two hundred fifty dollars;

(2) For each hotel and restaurant license, three hundred fifty dollars;

(3) For each tavern license, three hundred twenty-five dollars;

(4) For each racetrack license, two hundred fifty dollars.

(5) For each optional premises license, three hundred twenty-five dollars

Section 12. Unlawful Acts

A. It is unlawful for any person:

(1) To sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of any alcoholic beverages to or for any person under the age of twenty-one years, to a visibly intoxicated person, or to a known habitual drunkard.

(2) To obtain or attempt to obtain any alcoholic beverage by misrepresentation of age or by any other method in any place where alcoholic beverages are sold if such person is under twenty-one years of age;

(3) To have in his possession alcoholic beverages in any store, in any public place including public streets, alleys, roads, or highways, or upon property owned by the Tribe or any subdivision thereof, or inside vehicles while upon any streets, alleys, roads, or highways declared to be public by any law of the state of Colorado and/or the Southern Ute Indian Tribe if such person is under twenty-one years of age;

(4) To knowingly, or under conditions which an average parent or guardian should have knowledge of, or permit any person under twenty-one years of age, of whom he may be a parent or guardian, to violate the provisions of paragraph (2) or (3) of this subsection (A);

(5) To buy any alcoholic beverage from any person not licensed to sell at retail as provided by this article except as otherwise provided in this article;

(6) To sell at retail any alcoholic beverages in sealed containers without holding a retail liquor store license;

(7) To manufacture, sell, or possess for sale any alcoholic beverage unless such person is licensed to do so and any license issued to him pursuant to this article is in full force and effect; except that when permitted by federal law or regulation, an adult may manufacture, without a license, the amount permitted thereby for personal or family use;

(8) To consume alcoholic beverages in any public place except on any licensed premises permitted under this article to sell such liquor by the drink for consumption thereon; to consume any alcoholic beverage upon any premises licensed to sell liquor for consumption on the licensed premises, the sale of which is not authorized by the Tribal Council; to consume alcoholic beverages at any time on such premises other than such liquor as is purchased from such establishment; or to consume alcoholic beverages in any public room on such premises during such hours as the sale of such liquor is prohibited under this article;

(9) To regularly provide premises, or any portion thereof, together with soft drinks or other mix, ice, glasses, or containers at a direct or indirect cost or charge to any person who brings alcoholic beverages upon such premises for the purpose of consuming such alcoholic beverages on said premises during the hours in which the sale of alcoholic beverages is prohibited or to consume alcoholic beverages upon premises operated in the manner described in this paragraph (9);

(10) With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one years of age, for the unlawful purchase of any alcoholic beverages.

B. It is unlawful for any person licensed pursuant to this article:

(1) (a) To sell alcoholic beverages to any person under the age of twenty-one years, to an habitual drunkard, or to a visibly intoxicated person, or to permit any malt or vinous liquors to be sold or dispensed by a person under eighteen years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent

proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article.

(b) (i) If a licensee or his employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcoholic beverage, as defined in this article, the licensee or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four hours after the confiscation, turn it over to the tribal police. The failure to confiscate such fraudulent proof of age or to turn it over to the tribal police within twenty-four hours after the confiscation shall not constitute a criminal offense, notwithstanding Section 14 of this article.

(ii) If a licensee or his employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcoholic beverage, as defined in this article, the licensee or his employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or his employee or a peace or police officer does not render the licensee, his employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(c) Each licensee shall display a printed card, pursuant to paragraph (7) of this subsection (B), which contains a notice of the provisions of this paragraph (1).

(d) Any licensee or his employee acting in good faith in accordance with the provisions of this paragraph (1) shall be immune from any liability, civil or criminal; except that a licensee or employer acting willfully or wantonly shall not be immune from liability pursuant to this paragraph (1).

(2) To sell, serve, or distribute any alcoholic beverage on any Tribal Council election day, referendum day, or any primary or general election day (as defined by Colorado State law), during polling hours or at any specially designated time when the Tribal Council prohibits the selling, serving and distributing of alcoholic beverages.

(3) To sell, serve, or distribute any alcoholic beverages at any time other than the following.

(a) For consumption on the premises, on any Tuesday through Saturday and on any Monday which falls on a January 1, beginning each day at 12 midnight until 2 a.m. and from 7 a.m. until 12 p.m.;

(b) For consumption on the premises, on Sundays and Christmas, beginning at 12 midnight until 2 a.m. and from 8 a.m. until 8 p.m.;

(c) For consumption on the premises, on any Monday which does not fall on a January 1 and on any day after Christmas, beginning at 7 a.m. until 12 midnight.

(d) In sealed containers, on Monday through Saturday, beginning at 8 a.m. until 12 midnight each day, but no alcoholic beverage shall be sold, served, or distributed in a sealed container on any such weekday which is also Christmas.

(4) To offer for sale or solicit any order for vinous or spirituous liquors in person at retail except within the licensed premises;

(5) To have in possession or upon the licensed premises any alcoholic beverages, the sale of which is not permitted by said license;

(6)(a) To sell at retail alcoholic beverages except in the permanent location specifically designated in the license for such sale, or in such place to which a licensee may desire to move his permanent location. Such licensee may move his permanent location to any other place on the Southern Ute Indian Reservation, but it shall be unlawful to sell any malt, vinous, or spirituous liquor at any such place until permission to do so is granted by the Tribal Council.

(b) In permitting such change of location, the Tribal Council shall consider the reasonable requirements of the neighborhood in which the applicant seeks to change his location, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all reasonable restrictions which are or may be placed upon the new location by the Tribal Council. If the Tribal Council permits such change, they shall issue such permit without charge.

(7) The fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

Warning

It is illegal to sell alcoholic beverages to any person under twenty-one years of age, and it is illegal for any person under twenty-one years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are twenty-one years of age or older for you to purchase alcoholic beverages for a person under twenty-one years of age.

Fines and imprisonment may be imposed by the Tribal Court for violation of these provisions.

(8) To sell alcoholic beverages in a place where the same are to be consumed, unless such a place is a hotel, restaurant, tavern, or racetrack or optional premises;

(9) To display or cause to be displayed, on the licensed premises, any exterior sign advertising any particular brand of malt liquors unless the particular brand so designated in the sign is dispensed on draught or in sealed containers within the licensed premises wherein the sign is displayed;

(10) To have on the licensed premises, if licensed as a retail liquor store any container which shows evidence of having once been opened or which contains a volume of liquor less than that specified on the label of such container; except that a person holding a retail liquor store license may have upon the licensed premises malt, vinous, or spirituous liquors in open containers, if such open containers are samples brought on the premises and under the control of a wholesaler;

(11) To employ or permit, if such person is licensed to sell alcoholic beverages for on-premises consumption or is the agent or manager of said licensee, any employee, waiter, waitress, entertainer, host, hostess, or agent of said licensee to solicit from patrons in any manner for himself or herself or for any other employee, the purchase of any alcoholic beverage or any other thing of value.

Section 13. Unlawful Financial Assistance

A. It is unlawful for any person licensed to sell at retail pursuant to this article to receive and obtain from any manufacturer, wholesaler or importer of alcoholic beverages, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcoholic beverages within the premises or from asking for any structural alterations or improvements in or on the building on which such premises are located. This subsection (A) shall not apply to signs or displays within such premises or to advertising materials which are intended primarily to advertise the product of the wholesaler or manufacturer and which have only

negligible value in themselves or to the inspection and servicing of malt or vinous liquor dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

B. (1) It is unlawful for any person or corporation holding any license pursuant to this article or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article to be a stockholder, director, or officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article, but this subsection (B) shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof; and it is unlawful for any person or corporation licensed pursuant to this article, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other person licensed pursuant to the provisions of this article; except that paragraph (1) shall not apply to any financial institution which comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure if such financial institution does not retain such premises for longer than one year or for such time exceeding one year as provided in paragraph (2) of this subsection (B).

(2) In the case of a financial institution which comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure, the Tribal Council may grant a transfer of ownership for such license for a period of one year and, upon notice and hearing, renewal of such license may be granted. This paragraph (2) shall apply in the case of every foreclosure or deed in lieu of foreclosure in which disposition of the license has not otherwise been made by the Tribal Council.

C. It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a person licensed to sell at retail pursuant to the provisions of this article to enter into any agreement with any person or party to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party, whereby a person licensed to sell at retail pursuant to this article may be influenced or caused, directly or indirectly, to buy, sell, dispense, or handle the product of any manufacturer of alcoholic beverages. This subsection (C) shall not apply to displays within such premises.

D. Any transaction, agreement, or arrangement prohibited by the provisions of this section, if made and entered into by and between the persons and parties described and referred to in this section, is unlawful, illegal, invalid, and void, and any obligation or liability arising out of such transaction, agreement or arrangement shall be unenforceable in any court of this state by or against any such persons and parties entering into such transaction, agreement, or arrangement.

E. It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any retail liquor store, retail license, or retail dispensary of any kind licensed pursuant to this article except that it is not unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any hotel and restaurant license to conduct, own either in whole or in part, or be directly or indirectly interested in any other hotel and restaurant license or establishment. The Tribal Council shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant license issued under this article. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license shall be grounds for suspension or revocation of such license by the Tribal Council. The invalidity of any provision of this paragraph (E) concerning interest in more than one hotel and restaurant license shall invalidate all interests in more than one hotel and restaurant license, and such invalidity shall make any such interest unlawful financial assistance as described by this paragraph (E).

F. This section is intended to prohibit and prevent the control of the outlets for the sale of alcoholic beverages by any person or parties other than the persons licensed pursuant to the provisions of this article.

Section 14. Violations and Penalty

A. Except as otherwise provided in this section, any person violating any of the provisions of this article or any of the rules and regulations authorized and adopted pursuant to this article or any amendments or additions thereto is guilty of a liquor violation of the criminal code of the Southern Ute Indian Tribal Code and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment, for not more than one year, or by both such fine and imprisonment, for each offense; and, upon conviction thereof, any license granted and issued pursuant to the provisions of this article to said person so convicted may be revoked, and no such license shall thereafter be granted or issued to said person so convicted; and the court may decree that no license for the sale of alcoholic beverages shall ever thereafter be issued to any such person convicted of such violation.

B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this article but shall be construed to be in addition to any other penalties.

Article III. Retail Sales of Fermented Malt Beverages

Section 1. Licensing—General Provisions

A. All licenses granted pursuant to this article shall be nontransferable and good for one year from the date of issuance unless revoked and shall be granted by the Tribal Council upon receipt of an application upon a form provided for said purpose by said Tribal Council, accompanied by a remittance for the full amount of the license fee payable to the Tribe.

B. All licenses granted and issued pursuant to this article are separate and distinct from any licenses to be granted and issued pursuant to any other part of this Ordinance.

C. All licenses granted and issued pursuant to this article shall specify the date of issuance, the character and kind of license, the date of its expiration, the name of the licensee, and the place where the license is to be exercised.

D. Licenses granted and issued pursuant to this article shall at all times be conspicuously placed in the licensed premises where the said license is exercised and used.

E. If the place where the license is to be exercised is changed, a permit for this change must be obtained from the Tribal Council and conspicuously placed at all times in the place of business of the licensee.

F. (1) No licenses shall be refused arbitrarily or without good cause, and any such refusal may be reviewed upon application for judicial review to the Tribal Court.

(2) The Tribal Council, in its discretion, may revoke or elect not to renew a retail license if it determines that the licensed location has been inactive, without good cause, for at least one year or, in the case of a retail license approved for a facility which has

not been constructed, such facility has not been constructed and placed in operation within two years of approval of the license application or construction of the facility has not commenced within one year of such approval.

G. The Tribal Council shall not consider an application for any license to sell fermented malt beverages at retail if, within one year next preceding the date of the application, the Tribal Council has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the existing outlets.

H. In computing any period of time prescribed by this article, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

I. Application for the renewal of an existing license shall be made to the Tribal Council not less than forty-five days prior to the date of expiration. The Tribal Council may, for good cause, waive the time requirements set forth in this subsection I.

J. Licensees at facilities owned by the Tribe shall be regulated pursuant to guidelines established by the Tribal Council. However, fermented malt beverages and alcoholic beverages may not be served on the same premises at the same time. In the absence of such guidelines, the provisions of this article shall apply to licensees at facilities owned by the Tribe.

K. A licensee shall report each transfer or change of financial interest in the license to the Tribal Council within thirty days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of such stock totalling less than ten percent in any one year, but any transfer of a controlling interest shall be reported, regardless of size. It is unlawful for the licensee to fail to report a transfer as required by this subsection K. Failure to report a transfer shall be grounds for suspension or revocation of the license.

L. Each retail licensee who is licensed to sell for consumption on the premises or for consumption both on and off the premises shall manage such premises himself or employ a separate and distinct manager on the premises and shall report the name of such manager to the Tribal Council. Such licensee shall report any change in managers to the Tribal Council within thirty days after the change. It is unlawful for the licensee to fail to report the name of or any change in managers required by this subsection L. Such failure to report shall be ground for suspension of the license.

Section 2. License—Application—Hearings—Fees

A. The Tribal Council shall issue only the following classes of licenses under this article:

(1) Sales for consumption off the premises of the licensee;

(2) Sales for consumption on the premises of the licensee;

(3) Sales for consumption both on and off the premises of the licensee

B. (1) Application to sell fermented malt beverages at retail may be made to the Tribal Council prior to the construction of the building in which such beverages are to be sold. If, at the time an application to sell fermented malt beverages at retail is made to the Tribal Council, the building in which the beverages are to be sold has not been constructed, the following procedure shall be followed:

(a) The applicant shall file at the time of an application a plot plan and a detailed sketch for the interior of the building to be occupied and a drawing of the building to be constructed. In its discretion, the Tribal Council may impose additional requirements necessary for approval of the application.

(b) The premises upon which the building is to be constructed shall be posted by the applicant in such a manner that the notice is conspicuous and plainly visible to the public.

(2) No license shall be issued by the Tribal Council after approval of the application until the building in which the business is to be conducted is ready for occupancy, with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this article, and then only after inspection of the premises has been made by the Tribal Council to determine that the applicant has complied with drawings and the plot plan and detailed sketch for the interior of the building submitted with the application.

(C) Upon receipt of a complete application, except an application for renewal or for transfer of ownership, the Tribal Council shall schedule a public hearing upon the application not less than thirty days from the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation.

D. (1) At the public hearing conducted by the Tribal Council on an application to sell fermented malt beverages, any party in interest shall be allowed to present evidence and to cross-examine witnesses.

(2) "Party in interest," as used in this subsection D, means any of the following: The applicant; an adult resident of the neighborhood under consideration; the owner or manager of a business located in the neighborhood under consideration;or the principal or representative of any school located within five hundred feet of the premises for which the license is under consideration.

(3) The Tribal Council may, in its discretion, limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

E. The Tribal Council shall collect an annual license fee of fifty dollars.

F. Each application for a license filed with the Tribal Council shall be accompanied by an application fee in an amount determined by the Tribal Council to cover actual and necessary expenses subject to the following limitations:

(1) For a new license, not to exceed four hundred fifty dollars;

(2) For a transfer of location or ownership, not to exceed two hundred fifty dollars each;

(3) For a renewal of license, not to exceed fifty dollars. These fees are separate and distinct from the annual license fee set out in subsection E above.

Section 3. Qualification and Conditions for License

A. A license shall be granted to any person, partnership, association, organization, or corporation desiring to sell any fermented malt beverage meeting the following qualifications and conditions:

(1) The licensee, if a corporation, shall be incorporated pursuant to the laws of the state of Colorado or duly qualified to do business in the state of Colorado.

(2) The licensee shall be of good character and reputation. No license shall be issued to or held by any corporation any of whose officers, directors, or stockholders hold over ten percent of the outstanding and issued stock thereof unless such director, officer, or stockholder is of good moral character and reputation. In investigating the character of an applicant or a licensee, the Tribal Council may have access to criminal history record information furnished by a criminal justice agency subject to any

restrictions imposed by such agency. In the event the Tribal Council takes into consideration information concerning the applicant's criminal history record, the Tribal Council shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license. As used in this paragraph (2), "criminal justice agency" means any federal, state, municipal or tribal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

B. In considering the issuance of licenses, the Tribal Council shall consider the reasonable requirements of the neighborhood and the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise.

Section 4. Suspension and Revocation—Fines

A. The Tribal Council may on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license issued by the Tribal Council for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or of any of the rules or regulations authorized pursuant to this article, or of any of the terms, conditions or provisions of the license issued by the Tribal Council. Conviction of a violation of this article or any of the rules and regulations authorized and adopted pursuant to this article shall be grounds for, but shall not be required prior to, such a suspension or revocation.

B. Notice of suspension or revocation, as well as any required notice of a hearing, shall be given by mailing the same in writing by registered mail, return receipt requested, to the licensee at the address contained in such license. Any license may be temporarily suspended by the Tribal Council without notice pending any prosecution, investigation, or public hearing.

C. Nothing in this article shall prevent summary suspension of such license for a period not exceeding fifteen days. No suspension under this section shall be for a period longer than six months.

D. Whenever any license is suspended or revoked, no part of the fee paid thereof shall be returned or refunded to the holder of such license.

Section 5. Unlawful Acts

A. It is unlawful for any person:

(1) To sell fermented malt beverages to any person under the age of twenty-one years or between the hours of 12 midnight and 5 a.m. or to any person at times such sales are prohibited under special order of the Tribal Court.

(2)(a) To sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of, any fermented malt beverage to or for any person under the age of twenty-one years, to a visibly intoxicated person, or to a known habitual drunkard. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued pursuant to the provisions of this article.

(b)(i) If a licensee or his employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any fermented malt beverage, the licensed or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four hours after the confiscation, turn it over to the tribal police. The failure to confiscate such fraudulent proof of age or to turn it over to the tribal police within twenty-four hours after the confiscation shall not constitute a criminal offense, notwithstanding Section 8.A of this article.

(ii) If a licensee or his employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any fermented malt beverage, the licensee or his employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefore, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or his employee or a peace or police officer does not render the licensee, his employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(iii) Any licensee or his employee acting in good faith in accordance with the provisions of this paragraph (2) shall be immune from any liability, civil or criminal; except that a licensee or employee acting willfully or wantonly shall not be immune from liability pursuant to this paragraph (2).

(3) To obtain or attempt to obtain any fermented malt beverage by misrepresentation of age or by any other method in any place where fermented malt beverages are sold if such person is under twenty-one years of age.

(4) To have in his possession fermented malt beverages in any store, in any public place including public streets, alleys, roads, or highways, upon property owned by the Tribe, upon property held in trust for the Tribe, or inside vehicles while upon the public streets, alleys, roads, or highways if such person is under twenty-one years of age.

(5) To permit any person under twenty-one years of age of whom he may be a parent or guardian to violate the provisions of paragraph (1) or (2) of this subsection A if said parent or guardian knows or reasonably should know of such violation.

(6) To manufacture, sell, or possess for sale any fermented malt beverage unless such person is licensed to do so pursuant to this article and any license issued to him pursuant to this article is in full force and effect; except that, when permitted by federal law or regulation, an adult may manufacture, without a license, the amount permitted thereby for personal or family use.

(7) With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one years of age for the unlawful purchase of any fermented malt beverage.

B. It is unlawful for any person licensed pursuant to this article:

(1) To give away fermented malt beverages for the purpose of influencing the sale of any particular kind, make, or brand of any malt beverage and to furnish or supply any commodity or article at less than its market price for said purpose, except advertising material and signs.

(2)(a) On or after July 30, 1987, but prior to three years from said date, to fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen inches and width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

Warning

It is illegal to sell 3.2 beer to any person under the legal drinking age, and it is illegal for any person under the

legal drinking age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are the legal drinking age or older for you to purchase 3.2 beer for a person under the legal drinking age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(b) On or after three years from July 30, 1987, to fail to display at all times in a prominent place on premises for retail sale a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of on-half inch in height, which shall read as follows:

Warning

It is illegal to sell 3.2 beer to any person under twenty-one years of age, and it is illegal for any person under twenty-one years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are twenty-one years of age or older for you to purchase 3.2 beer for a person under twenty-one years of age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(3) To permit any fermented malt beverages to be sold or dispensed by any person under the age of eighteen years.

C. It is unlawful for any manufacturer or wholesaler to sell, deliver, or cause to be delivered to any retail licensee any beverage containing alcohol in excess of three and two-tenths percent by weight, or for any retailer to sell, possess, or permit the consumption on the premises of any of the beverages containing alcohol in excess of three and two-tenths percent by weight, or for any retail licensee to hold or operate under any license for the sale of any beverages containing alcohol in excess of three and two-tenths percent by weight for the same premises. Any violation by any licensee of the provisions of this subsection C shall immediately cause the cancellation of the license granted under this article.

D. (1) Not withstanding the increase in the legal drinking age from eighteen years of age to twenty-one years of age as contained in this section, any person who is eighteen years of age or older on July 29, 1987, may continue to purchase, possess, and consume any fermented malt beverage without violating the provisions in this section. It is likewise lawful for any person to sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of, any fermented malt beverage to or for any person eighteen years of age or older on July 29, 1987.

(2) This subsection D is repealed, effective three years from July 30, 1987.

Section 6. Federal Mandate—Effect on Law

If the Congress of the United States repeals the mandate established by the "Surface Transportation Assistance Act of 1982" relating to the national uniform drinking age of twenty-one, as found in section 6 of Public Law 98–363, or the United States Supreme Court declares the provisions to be unconstitutional or otherwise invalid, the pertinent age in section 8 shall be nineteen years of age.

Section 7. Unlawful Financial Interest

A. It is unlawful for any wholesaler or manufacturer to furnish, supply, or loan in any manner, directly or indirectly, to any retail licensee licensed pursuant to this article any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling serving, or dispensing of food or fermented malt beverages within the premises or for making any structural alterations or improvements in or on the building on which such premises are located; but this section shall not apply to signs or displays within such premises.

B. It is unlawful for any retail licensee licensed pursuant to this article to receive and obtain from any wholesaler or manufacturer, directly or indirectly, any financial assistance, or any equipment, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or fermented malt beverages within the premises, or to ask for any structural alterations or improvements in or on the building on which such premises are located; but this section shall not apply to signs or signs or displays within such premises, or to advertising materials which are intended primarily to advertise the product of the wholesaler or manufacturer and which have only negligible value in themselves, or to the inspection and servicing of malt beverage dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

C. It is unlawful for any person of a corporation holding any license pursuant to this article, or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article, to be a stockholder, director, or officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article, but this subsection C shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government or to FHA-approved mortgages, or to officers, directors, or stockholders thereof; and it is unlawful for any person or corporation licensed pursuant to this title, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other licensee under this article.

D. It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a retail licensee licensed pursuant to this article to enter into any agreement with any person or party to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party whomsoever, whereby a retail licensee licensed pursuant to this article may be influenced or caused directly or indirectly to buy, sell, dispense, or handle the product of any manufacturer of fermented malt beverages; but this section shall not apply to displays within such premises.

E. Any transaction, agreement, arrangement prohibited by this article, if made and entered into by and between the persons and parties described and referred to in this article, shall be unlawful and void, and any obligation or liability arising out of such transaction, agreement, or arrangement shall be unenforceable in tribal court by or aganist any such persons and parties entering into such transaction, agreement, or arrangement.

F. The purpose and intent of the provisions of this section is to prohibit and prevent the control of the retail outlets for the sale of fermented malt beverages by any persons or parties other than the retail licensee licensed pursuant to the provisions of this article.

Section 8. Violation—Penalty

Any person violating any of the provisions of this article or any of the rules and regulations authorized and adopted pursuant to this article or any amendments or additions thereto is guilty of a liquor violation of the Criminal Code of the Southern Ute Indian Tribal Code and, upon conviction thereof, shall be punished by a fine of

not more than five thousand dollars for each offense, or by imprisonment for not more than one year, or by both such fine and imprisonment; and, upon conviction thereof, any license granted and issued pursuant to the provisions of this article to said person so convicted may be revoked, and no such license shall thereafter be granted or issued to said person so convicted.

Section 9. Lawful Acts

It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises over eighteen years of age to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under eighteen may handle and otherwise act with respect to fermented malt beverages in the same manner as he does with other items sold at retail; except that no person under eighteen shall sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet. This section shall not be construed to permit the violation of any other provisions of this section under circumstances not specified in this section.

Section 10. Judicial Review

Any person applying to the tribal courts for a review of the Tribal Council's decision shall apply for review within thirty days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the Tribal Council when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Tribal Council pursuant to court order. Such court shall determine by a clear and convincing evidence whether said refusal was arbitrary and without good cause, and, if so finding, said court shall order the Tribal Council to issue said license.

Article IV. Special Event License

Section 1. Special Event Licenses Authorized

The Tribal Council may issue a special event license for the sale, by the drink only, of fermented malt beverages, or alcoholic beverages to organizations and political candidates qualifying under this article, subject to the applicable provisions of Article I, Article II, and Article III of this Title and to the limitations imposed by this Article IV.

Section 2. Qualifications of Organizations for Licenses

A. (1) A special event license issued under this article may be issued to an organization, which has been incorporated under the laws of the state of Colorado for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being non-profit in nature, or which is a regularly established religious or philanthropic institution, to any political candidate who has filed the necessary reports and statements with the secretary of state of Colorado, and to any organization or tribal political candidate determined by the Tribal Council to meet the same general guidelines as above.

(2) A special event license may be issued to any facility owned by the Tribe at which productions or performances of an artistic or cultural nature are presented for use at such facilities or at recreation facilities owned by the Tribe, subject to the provisions of this article.

Section 3. Grounds for Issuance of Special Event Licenses

A. A special event license may be issued only upon a satisfactory showing by an organization or a qualified political candidate that other existing facilities are not available or are inadequate for the needs of the organization or political candidate and:

(1) Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political candidate and that additional facilities are necessary by reason of the nature of the special event being scheduled; or

(2) The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during such special events and that members of the general public will be served during such special events.

B. A special event license may be issued under this section notwithstanding the fact that the special event is to be held on premises licensed under the provisions of Article I or Article III of this title. The holder of a special event license issued pursuant to this subsection (B) shall be responsible for any violation of Article II or Article III of this title.

C. Nothing in this article shall be construed to prohibit the sale or dispensing of fermented malt beverages or alcoholic beverages on any closed street, highway, or public byway for which a special event license has been issued.

Section 4. Fees for Special Event Licenses

A. Special event license fees are:

(1) Fifty dollars per day for an alcoholic beverage license.

(2) Twenty-five dollars per day for a fermented malt beverage license.

B. All such fees are payable in advance to the Finance Officer of the Southern Ute Indian Tribe, and the Tribe Council may require any applicant to post a performance bond to assure compliance with the provisions of this article.

Section 5. Restrictions Related to Special Event Licenses

A. Each special license shall be issued for a specific location and is not valid for any other location.

B. A special event license authorizes sale of the beverage or the liquors specified only during the following hours:

(1) Between the hours of seven a.m. of the day specified in an alcoholic beverage license and until two a.m. of the day immediately following.

(2) Between the hours of seven a.m. of the day specified in a fermented malt beverage license and until midnight of the same day.

C. A special event license may not be issued to any organization for more than ten days in one calendar year. This provision does not apply to tribally owned facilities.

D. No issuance of a special event license shall have the effect of requiring the Tribal Council to issue such a license upon any subsequent application by an organization.

E. Sandwiches or other food snacks shall be available during all hours of service of alcoholic beverages, but prepared meals need not be served. This provision does not apply to tribally owned facilities.

Section 6. Ground for Denial of Special Event Licenses

A. The Tribal Council may deny the issuance of a special event license upon the grounds that such issuance would be injurious to the public welfare by reason of the nature of the special event, its location within the reservation, or the failure of the applicant in a past special event to conduct such event in compliance with applicable laws and regulations.

B. Public notice of the proposed license and of the procedure for protesting issuance of the license shall

be conspicuously posted at the proposed location for at least ten days before approval of the license by the Tribal Council.

Section 7. Applications for Special Event Licenses

A. Applications for a special event license shall be made with the Tribal Council on forms provided by the Tribal Council and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.

B. In addition to the fees provided in section 4 of this article, applications shall be accompanied by such fee as the Tribal Council may fix, not to exceed twenty-five dollars, for both investigation and issuance of license.

C. The Tribal Council shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a license. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 6 of this article. Any hearing required by this subsection (C) or any hearing held at the discretion of the Tribal Council shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

Section 8. Exemptions

An organization otherwise qualifying under section 2 of this article shall be exempt from the provisions of this part and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization or unlicensed premises so long as an admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors.

Eddie F. Brown,

Assistant Secretary—Indian Affairs

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federal register

Thursday
July 9, 1992

Part IV

National Indian Gaming Commission

25 CFR Parts 571, et al.

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 571, 573, 575 and 577

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing regulations to implement the compliance and enforcement provisions of the Indian Gaming Regulatory Act of 1988. The proposed rule would establish procedures for monitoring and investigations, enforcement, civil penalties, and appeals to the Commission.

DATES: Comments must be received by September 8, 1992.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Compliance and Enforcement Rule Comments, National Indian Gaming Commission, suite 250, 1850 M Street NW., Washington, DC 20036–5803. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Neil Stoloff at 202–632–7003 ext. 35, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 24 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published a final rule (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts).

The regulations proposed today would implement the Commission's authority to enforce federal and tribal gaming requirements. The Commission is proposing rules separately regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act. In the coming months, the Commission will propose rule regarding its review of management contracts under sections 2711 and 2712 of the Act and tribal self-regulation under section 2710(c) of the Act.

Statutory Authority

Section 2705 of the IGRA authorizes the Commission's Chairman, subject to an appeal to the Commission, to:

(1) Issue orders of temporary closure of Indian gaming operations as provided in section 2713(b) of the Act;

(2) Levy and collect civil money penalties as provided in section 2713(a) of the Act;

(3) Approve tribal ordinances and resolutions regulating class II and class III gaming as provided in sections 2710 and 2712 of the Act; and

(4) Approve management contracts for class II and class III gaming as provided in sections 2710(d)(9) and 2711 of the Act.

Section 2706 of the IGRA authorizes the Commission to, among other things:

(1) Monitor class II gaming conducted on Indian lands;

(2) Inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) Inspect, examine, photocopy, and audit papers, books, and records concerning class II gaming conducted on Indian lands;

(4) After providing an opportunity for a hearing, make permanent an order of temporary closure of an Indian game; and

(5) Adopt such regulations and guidelines as the Commission deems appropriate to implement the Act.

Regulatory Approach

The IGRA authorizes the Commission to enforce the provisions of both federal and tribal gaming law. At the same time, the Act's regulatory scheme contemplates that Indian tribes, through ordinances and management contracts, certificates of self-regulation, and tribal-state compacts, will exercise primary regulatory authority over gaming on Indian lands. Although the regulations proposed today would implement the Commission's broad enforcement authority under the Act, they must be read within the context of a regulatory scheme that respects tribal sovereignty. Thus, as a matter of policy the Commission will, whenever practicable, afford tribes the opportunity to address compliance problems in the first instance.

For example, the Chairman's authority to issue notices of violation and orders of temporary closure is discretionary under the Act and these regulations. The Chairman intends to exercise this discretion only after a tribe, once notified of a violation, fails to take appropriate enforcement action in a timely manner.

In today's proposed regulations, the Commission also attempts to encourage early resolution of disputes by providing opportunities for settlement of enforcement actions and expedited review of orders of temporary closure.

In general, the enforcement provisions of these regulations apply to the owners and operators of Indian gaming operations, against whom the Commission is seeking civil sanctions. For simplicity's sake, such persons are referred to here as "respondents."

The flow chart presented below summarizes the enforcement process reflected in today's proposal. The Commission invites comment on both the basic approach of these regulations and any specific issues that commenters identify.

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ENFORCEMENT PROCESS FLOW CHART

When the Chairman finds a violation, he will attempt to work with the tribe to ensure compliance. If the tribe fails to take appropriate enforcement action, the Commission will follow the procedures outlined below.

If the violation is minor and readily correctable, the Chairman's representative will oversee on-the-spot compliance.

If the violation is not minor or readily correctable, but does not warrant closure, the Chairman's representative will issue a notice of violation prescribing corrective action within a time certain and will gather information necessary to calculate a penalty.

Within 15 days after the notice issues, the respondent may provide pertinent information to the Chairman regarding the violation.

Within 15 additional days, the Chairman may issue a proposed penalty assessment.

Within 30 days after service of the proposed penalty assessment, the respondent may appeal to the Commission.

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| If the violation warrants closure, the Chairman's representative, after consulting with the Chairman, will issue a notice of violation (as above) and an order of temporary closure, effective upon issuance.

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| Within 7 days after service of the order of temporary closure, the respondent may request expedited review by the Chairman.

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| Within 2 working days after the respondent makes a timely request, the Chairman will review the matter.

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| Within 2 working days after his or her review, the Chairman will render a decision.

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| Within 30 days after the date of closure, the respondent may appeal to the Commission.

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If the respondent files a timely appeal with the Commission, within 30 days after the request the Commission will designate a presiding official who will hold a hearing.

Within 30 days after the date the hearing concludes, the presiding official will issue a recommended decision.

Within 10 days after service of the recommended decision, the parties may file with the Commission any objections to the recommended decision.

Within 20 days after the period for filing objections, the Commission will affirm or reverse the recommended decision, in whole or in part. The Commission's decision constitutes final agency action.

Once the Commission takes final action, the respondent may appeal to the appropriate federal district court.

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Today's proposal would promulgate four new parts in chapter III of title 25 of the CFR: Monitoring and investigations, enforcement, civil penalties, and appeals before the Commission. Key provisions are discussed below.

Monitoring and Investigations

Part 571 sets forth general procedures for the Commission's exercise of its investigative and information-collection authorities under sections 2706(b), 2710(b)(2)(C), 2715, and 2716 of the Act. Section 2716(a) of the Act provides that "* * * the Commission shall preserve any and all information received pursuant to [the Act] as confidential pursuant to the provisions of (5 U.S.C. 552(b) (4) and (7) (the Freedom of Information Act (FOIA))]." Those provisions of the FOIA exempt from mandatory disclosure:

(1) Trade secrets and commercial or financial information; and

(2) Investigatory records (subject to certain limitations).

The Commission believes that section 2716(a) removes from the Commission the discretion it would otherwise have to disclose information that falls within the cited exemptions from FOIA. The Commission does not believe, however, that the IGRA makes all information the Commission receives under the Act confidential, whether or not such information logically falls within a FOIA exemption.

Still, the Commission believes that most of the information it receives under the Act will fall within one of the two cited FOIA exemptions. Information associated with fee reports, audit reports, background investigations, and management contracts, for example, clearly would be exempt from disclosure. Under the Commission's proposed interpretation of the Act, then, most information would be deemed confidential and, in the absence of an express waiver, exempt from disclosure.

Accordingly, proposed § 571.3 provides that, unless confidentiality is waived, the Commission will treat as confidential any and all information received under the Act and falling within exemptions (b)(4) and (b)(7) of the FOIA. Nonetheless, in accordance with section 2716(b) of the Act, when information indicates a violation of federal, state, or tribal statutes, regulations, ordinances, or resolutions, the Commission will provide such information to appropriate law enforcement officials. The Commission solicits comment on its interpretation of section 2716 of the Act.

Section 571.5 provides that the Commission's authorized representative, upon presenting appropriate credentials, may enter the premises of a gaming operation to inspect, examine, photocopy, and audit papers, books, and records concerning class II gaming conducted on Indian lands.

Sections 571.8 through 571.11 would implement section 2715 of the IGRA by authorizing the Commission to require, by subpoena and deposition, the attendance and testimony of witnesses, and the production of all books, papers, and documents relating to any matter under consideration or investigation by the Commission.

Sections 571.12 and 571.13 would implement sections 2710(b)(2)(C) and 2710(d)(2)(A) of the Act by requiring each gaming tribe to obtain an annual independent audit of all gaming operations on Indian lands and provide the results of the audit to the Commission.

Enforcement

Proposed part 573 sets forth general rules governing the Commission's enforcement of the Act, 25 CFR chapter III, and tribal laws, regulations, ordinances, and resolutions approved by the Chairman under 25 U.S.C. 2710 and 2712. Section 573.3 authorizes the Chairman to issue a notice of violation to the owner or operator of an Indian gaming operation. Section 573.6 identifies the circumstances under which the Chairman may exercise his authority to issue an order of temporary closure of all or part of an Indian gaming operation. Section 2713(b) of the IGRA grants this power when the Chairman finds "substantial" violations of federal or tribal law.

Proposed § 573.6(a) indentifies the specific violations deemed "substantial" violations that may warrant closure. In developing this list, the Commission focused on violations that, by their nature, may warrant closure immediately upon detection. If the Commission discovers, for example, that a gaming operation on Indian lands has no valid tribal license, immediate closure may be appropriate because the violation cannot be remedied quickly—that is, by qualifying for and obtaining a tribal license—and to allow the establishment to operate in the meantime would violate section 2710(b)(1) of the Act. (Note that section 2710(b)(1) appears to require a tribal license even when a tribe itself is the proprietor of a gaming operation.)

The Chairman will consider closure for violations other than the specific violations listed in § 573.6 when, under § 573.6(a)(1), noncompliance continues beyond the deadline for correction provided in a notice of violation, or beyond a reasonable time after notice by a tribe.

Section 573.6(b) provides that an order of temporary closure will be effective upon receipt, unless the order provides otherwise. In cases where a substantial violation does not warrant closure immediately upon detection, the Chairman may issue an order of temporary closure that, in the absence of appropriate correction action, will become effective on a date certain. The Commission solicits comment on its proposed approach to addressing "substantial" violations under section 2713(b) of the Act.

Because an order of temporary closure is a serious civil sanction, § 573.6(c) provides a right to informal expedited review of such an order. Whether or not a respondent seeks expedited review, however, proposed part 577 (discussed below) provides a right of appeal to the full Commission.

As noted above, the Chairman's authority under the IGRA to enforce tribal ordinances and resolutions is limited to ordinances and resolutions that have been approved by the Chairman under 25 U.S.C. 2710 or 2712. At a minimum, those ordinances and resolutions must meet the approval criteria of 25 U.S.C. 2710(b)(2). In addition, the Commission encourages tribes to include in ordinances and resolutions submitted for the Chairman's approval any additional provisions that the tribes may want the Chairman to assist in enforcing. Under proposed § 573.6(a)(9), for example, the Chairman may not be able to exercise his closure authority against a gaming operation that refuses to allow an authorized tribal official to enter or inspect the operation, unless an ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712 includes a provision that requires such access. In this example, the Chairman may be limited to his authority under 25 U.S.C. 2711(f) to void the management contract, which can only occur after notice and hearing.

Civil Penalties

Part 575 addresses the assessment of civil penalties under section 2713 of the Act. The objective of civil penalties is to deter violations and to promote maximum compliance with the terms and purposes of the Act. The Commission seeks, in exercising its civil penalty authority, to treat the owners and operators of Indian gaming establishments in a fair and equitable manner and to encourage swift resolution of compliance issues. (Note that collected civil penalties revert to

the U.S. Treasury; they are not used to fund Commission operations.)

Section 575.4 authorizes the Chairman to assess a penalty, not to exceed $25,000 per violation, for each notice of violation or order of temporary closure, after considering the following factors:

(1) Economic Benefit of Noncompliance

The Chairman will consider the extent to which the respondent obtained an economic benefit from a violation. In general, the Chairman will seek to impose a civil penalty that accounts for both the documented or estimated benefit and the likelihood of escaping detection. If a violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation, to the extend necessary to recover the total economic benefit of noncompliance.

The Chairman's consideration of the economic benefit of noncompliance is necessary to ensure that violators do not profit from their unlawful conduct and, conversely, that law-abiding Indian gaming operations are not placed at a competitive disadvantage. The Administrative Conference of the United States has endorsed this approach to civil penalty assessment (see 1 CFR 305.79–3, Recommendation A.I.)

(2) Seriousness of the Violation

The Chairman will consider the seriousness of a violation in terms of the extent to which the violation threatens the integrity of Indian gaming. Serious violations include, but are not limited to, the "substantial" violations listed in proposed § 573.6.

(3) History of Violations

The Chairman will consider the respondent's history of violations over the preceding five years.

(4) Negligence or Willfulness

The Chairman will consider the degree of negligence or willfulness of the respondent in causing or failing to correct the violation, through either act or omission.

(5) Good Faith

Finally, the Chairman may adjust a penalty based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notice of a violation.

Section 575.5 provides that, once cited for a violation, a respondent may submit information to assist the Chairman in determining the facts surrounding the violation and the penalty amount, if any. This section also allows the Chairman to review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of the proposed assessment.

The Chairman's civil penalty authority is discretionary under the Act. Proposed § 575.6, therefore, authorizes the Chairman to reduce or waive a penalty if he determines that, taking into account exceptional factors present in a particular case, the penalty is demonstrably unjust. The Chairman must fully explain and document every reduction or waiver.

Appeals Before the Commission

Proposed part 577 provides procedures for appeals to the Commission regarding:

(1) The fact of a violation alleged in a notice of violation or order of temporary closure;

(2) Civil money penalties assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The validity of the Chairman's voiding or modification of a management contract under 25 U.S.C. 2711(f) subsequent to initial approval. Appeals from other determinations of the Chairman under 25 U.S.C. 2711 and 2712 (Management contracts) and 2710 and 2712 (Tribal gaming ordinances) will be addressed elsewhere in chapter III of 25 CFR.

Part 577 provides for appeals to the Commission to be held before a presiding official designated by the Commission. To ensure a separation of prosecutorial and adjudicative functions within the Commission, the presiding official must have had no previous role in the enforcement action that is the subject of the appeal. Subject to certain minimum standards, the presiding official will have broad discretion to conduct the proceeding in a manner that will lead to an expeditious resolution yet provide a full airing of the issues.

Section 2713(b)(2) of the IGRA provides:

> Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

In interpreting this provision, the Commission found an apparent ambiguity: Does the *right* to a hearing last 30 days, or does the hearing itself have to be provided within 30 days after the Chairman issues an order of temporary closure? If the latter interpretation were to prevail, the Commission would have to provide some brief period (say, 10 days) within which a respondent would be permitted to request a hearing, and the Commission would be required to provide a hearing within the remainder of the statutory 30-day period (in this case, 20 days). The Commission believes that this approach would run the risk of forcing the respondent to file a hastily prepared appeal and the Commission to provide a quick hearing that may not withstand judicial scrutiny.

Rather, the Commission believes that a more reasonable interpretation of section 2713(b)(2) is that the right to appeal an order of temporary closure runs for 30 days from the date on which the Chairman issues the order. The Commission then would conclude a hearing within 30 days after the Commission's receipt of a timely notice of appeal, as provided in proposed § 577.4(b). As a matter of policy, the Commission would, whenever practicable, reach its decision on such an appeal within 90 days after issuance of the order of temporary closure, the shortest time required under any interpretation of the Act. The Commission also notes that any hardship that may result from concluding a hearing later than 30 days following issuance of an order of temporary closure would be mitigated by proposed § 573.6(c), which provides a right to informal expedited review of such an order. The Commission solicits comment on its proposed interpretation of section 2713(b)(2) of the IGRA.

Proposed § 577.8 provides for the protection of confidential information that may be contained in documents served on parties to appeals that involve more than two parties (in cases that involve only a single respondent and the Chairman, confidentiality is already protected under proposed § 571.4). The Commission has attempted to protect confidential information while affording parties access to information necessary for effective representation before the Commission. Section 577.8 conditions such access upon a party's agreement not to disclose confidential information.

In the same vein, the regulations proposed today would not provide for unlimited public access to proceedings under part 577 because of statutory restrictions on the Commission's discretion to disclose certain information (discussed above under Monitoring and Investigations). The Commission intends, however, to make available to the public significant decisions and other associated

documents, with any confidential information deleted.

Section 577.9 authorizes the presiding official to defer the hearing for a reasonable time to permit the parties to negotiate a settlement. In the absence of a settlement, § 577.10 provides that, if no issue of material fact is found to have been raised, the presiding official may issue a recommended decision based on the record before him or her. When a genuine question of material fact is raised, on the other hand, the presiding official will set the case for an evidentiary hearing.

Proposed § 577.12 provides that, under certain circumstances, the presiding official may permit persons other than the respondent to participate as parties. This may occur if the presiding official finds that:

(1) The outcome of the proceeding could directly and adversely affect the persons or the class they represent;

(2) They may contribute materially to the disposition of the proceeding; and

(3) Their interest is not adequately represented by existing parties.

Under § 577.14, the presiding official must render his or her recommended decision within 30 days after the conclusion of the hearing, after which the parties will have 10 days to file with the Commission their objections to any aspect of the recommended decision. Proposed § 577.15 requires the Commission, by a majority vote, to affirm or reverse, in whole or in part, the recommended decision of the presiding official within thirty (30) days after the date on which the presiding official issued the decision. In the absence of a majority vote by the Commission within the time provided, the action of the Chairman that is the subject of the appeal will be vacated. As provided in § 2714 of the IGRA, decisions by the Commission on appeals provided under proposed part 577 will be final agency decisions for purposes of appeal to the appropriate federal district court.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that, because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects

25 CFR Part 571

Gambling, Indians-lands, Investigations, Reporting and recordkeeping requirements.

25 CFR Part 573

Administrative practice and procedure, Gambling, Indians-lands.

25 CFR Part 575

Administrative practice and procedure, Gambling, Indians-lands, Penalties.

25 CFR Part 577

Administrative practice and procedure.

For the reasons set forth in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding new parts 571, 573, 575, and 577.

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

Sec.
571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

Subpart B—Inspection of Books and Records

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

Subpart C—Subpoenas and Depositions

571.8 Subpoena of witnesses.
571.9 Subpoena of documents and other items.
571.10 Geographical location.
571.11 Depositions.

Subpart D—Audits

571.12 Audit standards.
571.13 Copies of audit reports.
571.14 Relationship of audited financial statements to fee assessment reports.

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

Subpart A—General

§ 571.1 Scope.

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

§ 571.2 Definitions.

As used in this chapter, the following terms have the specified meanings:

Authorized representative means any person who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

Day means calendar day unless otherwise specified.

Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

Person means an individual, Indian tribe, corporation, partnership, or other organization or entity.

Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer

oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

Respondent means the owner or operator of an Indian gaming operation, against whom the Commission is seeking civil sanctions under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

§ 571.3 Confidentiality.

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act and falling within the exemptions of 5 U.S.C. 552(b)(4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in a multiple-party proceeding under part 577 of this chapter is addressed in § 577.8 of this chapter.

Subpart B—Inspection of Books and Records

§ 571.5 Entry of premises.

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

§ 571.6 Access to papers, books, and records.

(a) Once the Commission's authorized representative presents proper identification, the manager or another employee of a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, an employee of the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, an employee of the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

§ 571.7 Maintenance and preservation of papers and records.

(a) A gaming operation subject to regulation by the Commission shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for as long as their contents may become material in the administration of any federal or Indian gaming requirements, but in no event less than seven (7) years.

Subpart C—Subpoenas and Depositions

§ 571.8 Subpoena of witnesses.

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any mater under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

§ 571.9 Subpoena of documents and other items.

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

§ 571.10 Geographical location.

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

§ 571.11 Depositions.

(a) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before a person designated by the Commission who has the power to administer oaths.

(b) A Commissioner or a person designated by a Commissioner under paragraph (a) of this section shall give reasonable notice of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

Subpart D—Audits

§ 571.12 Audit standards.

A tribe shall obtain an annual independent audit of each gaming operation on Indian lands. Such audits shall be conducted in accordance with generally accepted auditing standards.

§ 571.13 Copies of audit reports.

A tribe shall submit to the Commission a copy of the report(s) on the results of each annual audit within 120 days after the end of each fiscal year.

§ 571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

Sec.

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

§ 573.1 Scope.

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal laws, regulations, ordinances, and resolutions approved by the Chairman under 25 U.S.C. 2710 and 2712. Civil penalties in connection with notices of violation and orders of temporary closure issued under this part are addressed in part 575 of this chapter.

§ 573.3 Notice of violation.

(a) The Chairman may issue a notice of violation to the owner or operator of an Indian gaming operation for any violation(s) of any provision of the Act or this chapter, or of any tribal law, regulation, ordinance, or resolution approved by the Chairman under 25 U.S.C. 2710 and 2712.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal law, regulation, ordinance, or resolution that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§ 573.6 Order of temporary closure.

(a) *When an order of temporary closure may issue.* The Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present;

(1) A tribal operator or management contractor fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after notice by a tribe.

(2) A tribe fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(4) A gaming operation operates for business without a license from a tribe, in violation of 25 U.S.C. 2710(b)(1).

(5) A gaming operation operates for business without background investigations having been completed under 25 U.S.C. 2710, 2711, or 2712.

(6) There is clear and convincing evidence that a gaming operation defrauds a customer.

(7) A management contractor operates for business without a contract approved by the Chairman under 25 U.S.C. 2711 or 2712.

(8) The owner, operator, or other agent of a gaming operation knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(9) An employee of a gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in 25 U.S.C. 2711(e).

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(b) *Order effective upon receipt.* The owner or operator of an Indian gaming operation shall close the operation upon receipt of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after receipt of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall conduct the expedited review provided for by this paragraph within two (2) working days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) working days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman issues an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall become permanent unless rescinded by the Chairman for good cause.

PART 575—CIVIL PENALTIES

Sec.

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

§ 575.1 Scope.

This part addresses the assessment of civil penalties under section 2713 of the Act with respect to notices of violation and orders of temporary closure issued under part 573 of this chapter.

§ 573.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil penalty will be assessed, the amount of the penalty, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total penalty amount assessed.

§ 575.4 When penalty will be assessed.

The Chairman may assess a penalty, not to exceed $25,000 per violation, for each notice of violation or order of temporary closure, after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation or order of temporary closure, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil penalty to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming. Serious violations include, but are not limited to, the substantial violations identified in § 573.6(a) of this chapter.

(c) *History of violations.* The Chairman may adjust a civil penalty by

an amount that reflects the respondent's history of violations over the preceding five (5) years. History of violations may be determined with respect to either a particular gaming operation or its owner or operator.

(1) A violation shall not be considered unless the associated notice or order is the subject of a final order of the Commission;

(2) No violation for which the associated notice or order has been vacated shall be considered; and

(3) Each violation shall be considered whether or not it led to a civil penalty assessment.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil penalty based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may adjust the amount of a penalty based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§ 575.5 Procedures for assessment of civil penalties.

(a) Within 15 days after service of a notice of violation, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice was issued, when practicable.

(c) The Chairman may review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§ 575.6 Settlement, reduction, or waiver of penalty.

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a penalty if he determines that, taking into account exceptional factors present in a particular case, the penalty is demonstrably unjust. The Chairman shall fully explain and document every reduction or waiver in the records of the case.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the penalty;

(ii) A detailed recitation of the facts that support a finding that the penalty is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman, within his or her discretion, shall determine whether to grant a reduction or waiver. The Chairman shall serve the respondent with a written determination, including a brief statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle an enforcement action, including the amount of the associated penalty. In the event a settlement is reached, a settlement agreement shall be prepared and signed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed penalty before the Commission in accordance with part 577 of this chapter.

§ 575.9 Final assessment.

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed assessment shall become a final order of the Commission.

(b) The Commission shall transfer penalties paid under this chapter to the U.S. Treasury.

PART 577—APPEALS BEFORE THE COMMISSION

Sec.

Authority: 25 U.S.C. 2706, 2713, 2715.

§ 577.1 Scope.

(a) This part provides procedures for appeals to the Commission regarding:

(1) The fact of a violation alleged in a notice of violation or order of temporary closures;

(2) Civil money penalties assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The validity of the Chairman's voiding or modification of management contract under 25 U.S.C. 2711(f) subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2711 (Management contracts) and 2710 (Tribal gaming ordinances) are addressed elsewhere in this chapter.

§ 577.3 Request for hearing.

(a) A respondent may contest before the Commission the matters listed in § 577.1(a)(1) through (4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

(1) A notice of violation;

(2) A proposed penalty assessment or reassessment;

(3) An order of temporary closure; or

(4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall include a statement of the reasons why the respondent believes the Chairman's action to be erroneous, including supporting documentation, if any.

§ 577.4 Hearing deadline.

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the respondent waives this requirement. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph, while ensuring due process to all parties.

§ 577.6 Service.

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the

Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to the extent that § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail or facsimile, upon receipt.

(d) Whenever an attorney or other representative has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

(e) Computation of time for filing and service. In computing any period of time prescribed for filing and serving a document, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, federal legal holiday, or other nonbusiness day, in which case the period shall run until the end of the next business day.

(f) Extensions of time. (1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

(2) A request for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

§ 577.7 Conduct of evidentiary hearing.

(a) When a genuine question of material fact is raised, the presiding official shall, and in any other case may, set the case for an evidentiary hearing. Within limits established by the presiding official, an evidentiary hearing under this section shall include an opportunity to submit oral and documentary evidence, cross-examine witnesses, and present oral arguments.

(b) When holding a hearing under this part, the presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information among the parties when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

(6) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph b(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 577.14 of this part; and

(10) Take other actions authorized by the Commission consistent with this part.

§ 577.8 Request to limit disclosure of confidential information.

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

(1) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(i) A copy of the document, group of documents, or segregable portions of the documents marked "Confidential Treatment Requested"; and

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except within the context of the proceeding; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known address. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal a part of the official record.

§ 577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under § 577.11 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. Whether to grant the motion shall be in the discretion of the presiding official.

(b) *Consent.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) A waiver of any further procedural steps before the Commission;

(3) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(4) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§ 577.10 Summary recommended decision.

If no genuine issue of material fact is found to have been raised, the presiding official may declare the hearing concluded and, within thirty (30) days thereafter, issue a recommended decision. A recommended decision under this section shall include a statement of:

(a) Findings of fact and conclusions of law on all issues presented; and

(b) Any terms and conditions of the recommended decision.

§ 577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings; and

(3) Their interest is not adequately represented by existing parties.

(b) A person not named as a party who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a party at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(c) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(d) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(e) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae (that is, "friend of the court").

§ 577.13 Transcript of hearing.

Evidentiary hearings under § 577.7 of this part shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

§ 577.14 Recomended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the filing of the transcript with the presiding official, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall include findings of the fact and conclusions of law upon each material issue of fact or law presented on the record. The decision of the presiding official shall be based upon the whole record.

(b) *Filing of objections.* Within (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§ 577.15 Review by Commission

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the action of the Chairman that is the subject of the appeal shall be deemed vacated.

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July 9, 1992

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Part 245
Railroad User Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 7]

RIN 2130-AA62

Railroad User Fees

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration ("FRA") is today issuing a final rule establishing the railroad user fee program. The Federal Railroad Safety Act of 1970 (the "Safety Act") requires FRA to equitably assess a schedule of fees on railroads to cover the costs incurred by FRA in administering the Act. The program adopted in the final rule is based substantially on the proposal identified by FRA in the notice of proposed rulemaking ("NPRM"). Some minor adjustments have been made in response to comments received on the NPRM and to clarify certain provisions.

The purpose of the regulation is to implement the authorizing legislation by assessing the fees according to a formula that is based on a combination of road miles, train miles, and employee hours.

DATES: Effective Date: The final rule is effective on August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP-12), FRA, Washington, DC 20590 (Telephone: 202 366-0384); or William R. Fashouer, Deputy Assistant Chief Counsel, Office of Chief Counsel, (RCC-10), FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388-399) amended the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) by adding a new section 216 requiring the Secretary of Transportation to establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but not based on the proportion of industry revenues attributable to a railroad or class of railroads. The fees to be collected are to be imposed on railroads subject to the Safety Act and are to be designed to cover the costs of administering the Safety Act, other than activities described in section 202(a)(2) thereof (45 U.S.C. 431(a)(2)). The Secretary's authority under the Safety Act, including the authority to implement new section 216, has been delegated to the Federal Railroad Administrator. (See 49 CFR 1.49(m)).

The Secretary is further directed in section 216 to assess and collect the applicable user fees with respect to each fiscal year before the end of the fiscal year. The aggregate fees received for any fiscal year may not exceed 105 percent of the aggregate of appropriations made by the Congress for the fiscal year for activities covered by the fees. The Secretary's authority to collect fees is to expire on September 30, 1995. FRA estimates that the costs to be incurred by FRA's Office of Safety in administering the Safety Act in fiscal year 1992 that would be reimbursed through user fees will equal approximately $32 million.

B. History of the User Fee Regulatory Process

On September 30, 1991, FRA published an interim final rule establishing the railroad user fee program for fiscal year 1991 (56 FR 49418). The interim final rule based the collection of railroad user fees for fiscal year 1991 on two criteria: train miles and road miles and was preceded by a notice of proposed rulemaking which was published in the **Federal Register** on May 7, 1991 (56 FR 21216). In proceeding with an interim final rule applicable to fiscal year 1991 only, FRA acceded to the wishes of certain segments of the rail industry, which requested FRA to reopen the proceeding in fiscal year 1992 in order to consider whether there might be other allocation criteria that better distribute the user fee burden across the railroad industry. On November 8, and December 6, 1991, FRA held open meetings to hear suggestions from the railroad industry and the public on options and criteria for the assessment of railroad user fees for fiscal years 1992 through 1995. Participating in the open meetings were representatives of the major railroad industry associations, and a number of individual railroads. FRA published a revised NPRM implementing the railroad user fee program for fiscal year 1992 through 1995 in the **Federal Register** on February 26, 1992 (57 FR 6571).

In its NPRM, FRA proposed a revised allocation formula through which railroad user fees would be assessed. FRA would assess railroad user fees on the basis of three criteria: One criterion, road miles, would be a measure of system size; the second criterion, train miles, would be a measure of volume; and the third criterion, employee hours, would be a measure of employee activity. FRA also proposed to apply a revised sliding scale system to help relieve the user fee burden on light density lines. FRA proposed to apply the revised formula across the board to all railroads, large or small, and to include a minimum fee of $500.00 to ensure that each railroad pays a share of the costs of the FRA safety and enforcement program.

FRA held a public hearing on the NPRM on April 2, 1992. FRA received a number of comments from the public, including more than a dozen written comments and more than 65 pages of hearing transcript.

II. Overview

FRA has carefully considered the comments it received on the NPRM. As we have indicated throughout this proceeding, FRA appreciates the effort put forth by those who have participated in the user fee regulatory process. Railroads of different size, type, class, and geographic location (to name just a few factors) have very different views on how user fees should be allocated across the railroad industry. FRA has stressed throughout this proceeding that its goals were the adoption of a fair and equitable system that did not involve burdensome administration for either FRA or the railroads. FRA believes very strongly that, within the constraints of the data available, the final rule adopted herein accomplishes those goals.

With these considerations in mind, FRA has decided to proceed as follows in implementing the user fee program. The final rule provides for the allocation of user fees based on the three factors identified by FRA in the NPRM: train miles, road miles, and employee hours. The allocation amongst the three criteria has been adjusted slightly from that included in the NPRM. In the final rule, train miles account for fifty-five percent of the railroad's users fee, road miles account for thirty-five percent of the railroad's user fee and employee hours account for ten percent of the railroad's user fee. The sliding scale proposed in the NPRM has been adopted without change as has the $500.00 minimum fee. FRA has included a number of clarifying changes throughout the final rule reflecting minor adjustments that FRA identified as necessary in light of comments received on the NPRM or from our experience in implementing the

fiscal year 1991 user fee collections. For the most part, these revisions do not reflect substantive changes. Most revisions are clarifications or the provision of greater detail on existing provisions that will assist entities subject to the rule in interpreting and applying it.

III. Discussion of Comments

Comments were received on the NPRM from 17 railroads, commuter agencies or associations, either through testimony at the public hearing or written comments. Testifying at the public hearing in Washington, DC on April 2, 1992 were representatives of the American Short Line Railroad Association ("ASLRA") (including representatives of several member railroads), the Association of American Railroads ("AAR"), the National Railroad Passenger Corporation ("Amtrak"), Norfolk Southern Corporation ("Norfolk Southern"), and the Railway Labor Executives Association ("RLEA"). Written comments were received from 12 entities, mostly small and medium size railroads, commuter railroads, and industry associations. The volume of comments was significantly reduced from the level FRA received in response to the fiscal year 1991 NPRM. In keeping with FRA's stated policy to consider late filed comments to the extent practicable, FRA considered all comments submitted through May 15, 1992.

A. Allocation Formula

The principal focus of the comments FRA received on the NPRM was the allocation formula and just about all of the commenters addressed this issue in some fashion. The ASLRA and several individual class II and III railroads generally supported the proposed formula while all of the other commenters suggested revisions. Not surprisingly, the addition of the employee hours factor to the allocation formula attracted the most attention. Several commenters supported it as an appropriate reflection of railroad activity and thus, a relevant component in allocating user fees. Other commenters argued that it was inappropriate because it duplicated the train mile factor and unreasonably burdened commuter and passenger railroads.

The addition of the employee hours component attracted considerable attention from Amtrak and the commuter railroads all of which objected to the inclusion of this factor. Amtrak and the commuter railroads argued that their operations were labor intensive, and thus, they were unfairly burdened by the inclusion of this factor. Amtrak further argued that it employed a number of personnel in jobs not found in the freight railroad system and thus it reported significantly higher employee hours than a freight railroad of comparable size. FRA also notes that freight railroads employ substantial numbers of people in jobs not found on Amtrak or commuter railroads. In response to these comments, FRA decided to retain employee hours as part of the allocation formula, but to reduce its proportion of the user fee formula from the twenty percent (20%) proposed in the NPRM to ten percent (10%). The ten percent (10%) withdrawn from the employee hours component has been reassigned equally to the other two factors (road miles and train miles). The resulting formula will be fifty five percent (55%) train miles, thirty five percent (35%) road miles, and ten percent (10%) employee hours.

FRA continues to believe, as noted by ASLRA, that employee hours is a relevant measure of railroad activity and should be included as part of the user fee formula. Among other things, a basic purpose of most of the rail safety statutes is to protect railroad employees. FRA's regulations and inspection and enforcement activity are shaped accordingly.

The original allocation formula proposed by FRA based collection of railroad user fees on two criteria: road miles and train miles. FRA noted in the original NPRM that "FRA selected these criteria because they equitably allocated user fees across the railroad industry, they represented data the industry was already maintaining and therefore imposed only a limited additional reporting burden on the industry, they represented data that FRA could verify, and they allowed FRA to complete the interim rulemaking process in fiscal year 1991."

Commenters suggested that the interim rule placed undue emphasis on the fixed component of rail operations and insufficient weight upon rail activity, thus burdening the light density lines. Other comments suggested that employee hours be included in the allocation formula to offset the emphasis on the fixed component and more equitably reflect the focus of safety activities. Subsequent to the Open Meetings and in response to these and similar comments, FRA sought in the February 29, 1992 NPRM to reduce the weight of system size measures and still equitably allocate user fees. FRA proposed an allocation formula composed of three criteria, road miles, train miles, and employee hours, with respective weights of thirty percent (30%), fifty percent (50%), and twenty percent (20%). These allocations represented FRA's view of a fair allocation between activity and fixed facility components. The commuter and intercity carriers voiced strong opposition to the proposed emphasis on employee hours because they believed a disproportionate number of employees were required for passenger operations vis-a-vis freight operations and that the formula thus operated unfairly to their disadvantage. Further, rail labor was concerned that the user of employee hours in the formula could promote the use of contract employees.

Upon further review, FRA concluded that assigning twenty percent of the allocation formula to the employee hours component produced an allocation that unfairly burdened commuter and intercity carriers. To remedy this inequity, FRA decided that the best course of action was to reduce the employee hours component to ten percent (10%) and reallocate the other ten percent (10%) equally to the other two components. FRA considered and rejected assigning the full ten percent to the road miles component because that would have resulted in an allocation formula weighted too heavily on the fixed facility component which was, of course, one of the principal objections to the interim final rule allocation. Assigning the full ten percent to the road miles component would have increased that factor to forty percent (40%) which FRA considered to be too close to the interim final rule allocation which had generated so much opposition within the industry.

FRA also considered and rejected allocating the full ten percent to the train mile component. While that would have provided some benefits to the commuter and passenger carriers, it retained an allocation too heavily weighted on activity measures. The commuter and intercity passenger carriers have also voiced objections to the train mile component on the basis that this factor also potentially operates to the detriment of their operations which involve the operation of shorter and more frequent trains as opposed to the longer trains operated by some of the large freight carriers. As a result, FRA concluded that assigning the full ten percent (10%) to the train mile component would not adequately ameliorate the inequity identified by the commuter railroads and Amtrak.

Under the revised formula, the fixed facility component (road miles) will account for approximately one-third of the total user fee calculation, while

railroad activity measures (train miles and employee hours) will account for approximately two thirds of the calculation. FRA is of the opinion that this allocation formula produces a fair and reasonable distribution of railroad user fees. Clearly, FRA's goal is to achieve a formula that properly balances fixed facility and performance oriented measures in order to be responsive to the comments we have received throughout this proceeding.

The net effect of the final rule provides relief to 389 low density carriers and an overall reduction to Class II and III carriers of almost 3% from 11.7% of the total user fees under the interim final rule to 8.9% under the final rule adopted herein. The incremental change from 50/30/20 to 55/35/10 results in a negligible increase for Class III carriers and a slight decrease for Class II carriers. While the revised allocation represents an increase in fees for passenger operations from the allocation found in the interim final rule (from about 6.9% to 8.9%), it reflects a reduction of almost one percentage point from the 50/30/20 allocation.

The ASLRA generally supported the formula proposed in the NPRM. The ASLRA noted that the proposed formula weights railroad activity and system size, with emphasis on the former, where it belongs. The ASLRA also noted that the proposed formula is simple, verifiable, and administratively workable. The ASLRA urged FRA to adopt the proposed formula as the best practicable user fee allocation (with a minor adjustment related to switching and terminal railroads). The ASLRA's comments also urged FRA not to adopt proposals involving user fee allocations based on railroad-specific safety expenditures or safety risk assessments. The ASLRA believed that credible data, which are essential to the foundation of a system of this type, are not available and that this type of allocation formula would be unduly complicated and difficult to administer. Finally, the ASLRA favored the scaling factor included in the NPRM and noted that the revised scaling factor would help prevent user fees from pushing marginal line segments operated by short lines and regionals into the abandonment candidate category.

As to switching and terminal railroads, the ASLRA requested FRA to modify the train mile component of the rule to address the calculation of train miles when actual train miles are not known. It was never FRA's intention to impose a requirement that yard switching miles be calculated on the basis of six miles per hour for time actually engaged in yard switching service if the locomotive lacked a mechanism for calculating yard miles. Railroads are authorized to calculate yard switching miles on any reasonable, supportable, and verifiable basis. The opportunity to use six miles per hour is simply offered as an option for railroads that do not wish to develop an otherwise supportable basis. The final rule has been adjusted to clarify FRA's intent on this subject. FRA wishes to highlight, however, that while railroads have an option in how they calculate yard switching miles, they must use a consistent basis for calculating yard switching miles under all FRA reporting requirements.

The AAR, representing the Class I railroads and Amtrak, reiterated the position it advocated in written comments submitted to the FRA shortly after the second public meeting in December 1991. Specifically, AAR proposed that the Class I freight railroads and Amtrak be assessed a portion of the total user fees based on FRA's safety inspection efforts expended on those railroads. AAR further recommended that the fees payable by the Class I freight and Amtrak be divided among them on the basis of route miles and train miles as established in FRA's interim formula for 1991. FRA considered this proposal very carefully in preparing the NPRM for fiscal years 1992–1995. Section D 5 (Association of American Railroads Proposal) of the NPRM (57 FR 6571, 6574) and the discussion following it contains a detailed analysis of the proposal and the reasons why FRA decided not to adopt it as the proposed rule in this proceeding. FRA remains of the view that these reasons remain valid ones and the relevant discussion is incorporated herein by reference.

To summarize our view, the language of section 216 focuses on output/size measures rather than on safety expenditures or individual risk assessments as the basis for allocating user fees. Accordingly, the statute does not require, either explicitly or implicitly, that FRA base the collection of user fees on the extent of oversight a particular railroad or class of railroads receives from the FRA. As indicated in the NPRM, FRA is currently implementing a new National Inspection Plan which will form the basis for allocating FRA safety inspection resources. FRA remains strongly of the opinion that the new National Inspection Plan needs to be implemented on its own merits without requiring it to shoulder the burden of the user fee allocations as well.

In addition to the reasons identified by FRA for rejecting a linkage between the user fee collections and FRA's actual expenditure of safety inspection resources, FRA identified several specific concerns it had with the proposal advocated by the AAR. First, the establishment of three classes of railroads (Class I, II and III) is not related in any way to safety concerns, but rather reflects a revenue-based distinction established by the Interstate Commerce Commission. Revenue-based distinctions are inconsistent with the statute. As a result, there is no railroad safety justification for dividing the industry into three classes and there would be none for assigning FRA's costs among the three classes. FRA does not allocate its safety resources on that basis. Second, FRA noted that its allocation of resources is changing significantly during implementation of the new National Inspection Program. As a result, the actual FRA expenditure of resources in fiscal year 1992 could be significantly different than that expended in 1991. Since the fiscal year 1992 collections are based on 1991 data, FRA did not consider it appropriate to rely on data that may be considerably outdated.

The AAR also requested the agency to consider adopting whatever allocation formula it selected for fiscal year 1992 only and to reopen the proceeding again in fiscal year 1993 in order to consider other allocation options. As the agency has noted on several occasions, it proceeded with an interim final rule for fiscal year 1991 and reopened the proceeding in fiscal year 1992 because the limited time available in fiscal year 1991 did not allow for an extensive period of public involvement in the rulemaking process. To allow for broader public involvement in the fiscal year 1992 through 1995 proceeding, FRA conducted a series of public meetings and provided for a longer public comment period on the NPRM. Accordingly, the agency is of the view that it would not be appropriate to reopen the proceeding each year to consider different allocation formulas. The two-stage process undertaken so far has been sufficiently confusing to covered railroads that FRA would certainly not want to repeat the process on an annual basis. The agency is satisfied that the user fee collection process established in this final rule is a fair and reasonable one. Accordingly, the agency has decided to adopt it for the fiscal years 1992 through 1995 as proposed in the NPRM. Naturally, our decision not to reopen the proceeding on an annual basis does not mean that the

agency will not monitor the user fee allocation formula adopted herein and take whatever action is appropriate if the agency determines that a fair allocation of railroad user fees is not being maintained.

The FRA also received a significant number of comments from commuter railroads whose participation in the current rulemaking was considerably larger than the fiscal year 1991 proceeding. A number of the comments received from the commuter railroads related to the issues of (1) the fairness and equity of collecting user fees from commuter railroads and (2) the problems commuter railroads have in meeting the costs of providing service and the additional burden associated with paying user fees. Several commenters also noted the undesirable consequences that may flow from the fare increases commuter railroads will have to impose to generate sufficient funds to make user fee payments. FRA has noted from the very beginning of this proceeding that there are a number of issues related to user fees over which it has no control. The existence of user fees and the amount to be collected constitute the most prominent of these. FRA certainly recognizes that the payment of railroad user fees produces certain adverse consequences for both freight and commuter railroads and requires a reallocation of resources. Lack of resources to meet user fee and other costs is not a problem restricted to commuter railroads. In considering this issue, FRA has concluded that it has limited discretion in the area of what railroads are or are not to be subject to user fees. Commuter railroads constitute a significant component of the railroad industry and one that currently receives an important and undoubtedly growing level of oversight from FRA's safety personnel. In addition, because of the nature of the user fee statutory mandate, the establishment of any exemptions requires a reallocation of the user fee burden to other railroads. Finally, the statute evidences no congressional intention to exempt commuter railroads and does include criteria (*e.g.*, passenger miles) consistent with charging user fees to commuter railroads. In light of these considerations, FRA cannot justify either a blanket exemption for commuter railroads, as some commenters suggested, or placement in the minimum fee ($500.00) category, as others proposed.

As noted above, the commuter railroads expressed strong reservations over the inclusion of the employee hours component. FRA has recognized these concerns are legitimate ones and has adjusted the formula to alleviate any unfairness to commuter railroads.

Several commenters supported other bases upon which to allocate user fees, including gross ton miles, revenue ton miles, and car miles. FRA considered all of these items when first faced with the challenge of developing a user fee regulation and commenters have previously raised them in comments at earlier stages in this proceeding. Since none of these factors are currently reported by all railroads, employing them as a basis for collecting user fees not only adds a new data collection and reporting burden but also creates an almost insurmountable burden in developing sound data to govern the first year's user fee collections. In light of these difficulties, FRA has rejected these suggestions while conceding that absent these drawbacks one or more of them might make a fine basis upon which to fairly allocate railroad user fees.

Several commenters raised specific issues regarding what types of activities that must be reported as part of the employee hours component. Each railroad is already required to report its employee hours to FRA under 49 CFR part 225 and FRA's Guide for Preparing Accident/Incident Reports contains additional information detailing how employee hours are to be calculated. FRA does not intend to alter the types of information to be submitted under the user fee reporting requirement. Thus, volunteer hours and hours worked by contractor employees are not included in the employee hours figure to be provided to FRA under the accident/incident rules and this rule does not change that. The RLEA objected to the failure to include contractor employee hours worked in the employee hours reporting requirement. FRA does not believe that the benefit associated with including contractor hours justifies the additional burden associated with collecting employee hours for these activities. The record indicates that adding contractor employee hours would be administratively burdensome since a significant percentage of contract work in the industry is currently performed on a unit cost or fixed cost basis for which there is no employee hour data. In addition, work performed by the hour often has more than just employee hours associated with it, since the rates usually include equipment. Railroads could require future agreements with contractors to include employee hour data, however, this would entail additional costs (for the contractors to provide such data and for the railroads to assemble it) and some contractors would undoubtedly be reluctant to provide this information on contracts with lump sum prices. Including employee hour data for contractors would be particularly difficult for fiscal year 1992 collections since data supporting these hours was not required to be kept during calendar year 1991 (the relevant reporting period for the fiscal year 1991 user fee). Finally, as noted above, contractor hours are not reported by railroads under the employee hours reporting requirements found in 49 CFR part 225. Since there are significant benefits to keeping the reporting requirements consistent, not the least of which is ease of administration and a lesser burden on the industry, the agency does not favor adding contractor hours to the user fee employee hours reporting requirement.

B. Covered Activities

FRA received minimal comment on the issue of what FRA activities should be reimbursed from user fees. The American Trucking Association reiterated comments it provided on the fiscal year 1991 NPRM to the effect that certain additional items of expense incurred by FRA should be reimbursed by the railroad industry through user fees. FRA responded to these suggestions in detail in the interim final rule (See 56 FR 49421) and the agency's views on these matters have not changed.

IV. Section-by-Section Analysis

Section 245.1 describes the purpose and scope of the user fee regulations. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.3 defines the applicability of these regulations. The user fee rule applies to entities meeting the statutory definition of railroad, except those railroads whose entire operations are confined within an industrial installation. FRA's rationale for excluding these so called "plant railroads" was outlined in the original May, 1991 NPRM. An additional discussion of this topic can be found in 49 CFR part 209, Appendix A. The term "railroad" is otherwise intended to have the full breadth encompassed in the statutory definition found in section 202(e) of the Safety Act (45 U.S.C. 431(e)). This section remains unchanged from the NPRM.

Section 245.5 includes a series of definitions of important terms employed in the user fee regulation. In response to inquiries received by FRA during the collection of the fiscal year 1991 user fees, FRA has added definitions of

several additional terms. New definitions have been added for industrial track, responsible entity, and yard track. The definitions of industrial track and yard track have been included to assist railroads in completing the road mile portion of the user fee reporting form.

FRA has also added a definition of the term responsible entity. For the purposes of railroad user fees, FRA will consider the responsible entity to be the entity that owned the railroad as of December 31 of the applicable fiscal year. FRA's fiscal year runs from October 1 to September 30. As a result, for fiscal year 1992, the responsible entity would be determined as of December 31, 1991. FRA has incorporated the concept of a responsible entity into the user fee rule because of difficulties encountered in fiscal year 1991 collections in terms of entities that changed owners during the fiscal year. FRA is of the opinion that the parties to these transactions are best able to allocate the user fee responsibility amongst themselves. December 31 was selected because it coincides with the existing road mile reporting date.

A minor clarification has been made to the definition of train mile in terms of calculating yard switching miles to indicate that the option of calculating yard switching miles at a rate of 6 mph for the time actually engaged in yard switching service is only one option available to a railroad for calculating these train miles. FRA will accept any method of calculating these miles that is reasonable, supportable, and verifiable. No other changes have been made to § 245.5.

Section 245.7 identifies the penalties FRA may impose upon any individual or entity that violates any requirement of this part. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.101 establishes the user fee reporting requirements and identifies the information which must be reported to FRA on an annual basis. FRA has made several changes to this section designed to clarify road mile and employee hours reporting requirements. In terms of the road mile component, it is FRA's intention that the road miles associated with a given section of railroad should be reported by only one entity. As a result, FRA has amended § 245.101(d) to provide that road miles are to be reported for all track owned, operated under lease, or controlled by the railroad. FRA reiterates that road miles consisting of leased track are to be reported by the lessee railroad. Road miles for jointly owned track are to be reported by the railroad controlling operations on the line. Section 245.101(d)(1) has been amended to clarify FRA's intention on this issue as well.

The fiscal year 1991 user fee assessment process brought to FRA's attention the fact that certain railroads have inappropriately designated track segments of unusual length as industrial or yard tracks. In the absence of exceptional circumstances, FRA does not intend for industrial or yard tracks to extend beyond a few miles at most. As noted above in the discussion of changes to § 245.5, FRA has added definitions of both industrial track and yard track to clarify the treatment of these two situations. Finally, FRA has added a clarification that road miles do not include track that was out of service for the entire calendar year that is the subject of the report.

FRA has made one change to § 245.101(e) to indicate that employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e., contractor employees). An explanation of FRA's views on this issue was included above.

FRA has added a new section (h) to § 245.101 (and renumbered the original (h) as (i)) to emphasize that each railroad required to report to FRA under various reporting requirements must report information in a consistent manner, e.g. train miles reported under user fee reporting requirements must be consistent with train miles reported to FRA on the Illness and Injury Summary Report. Railroads have a continuing obligation to explain and resolve any discrepancies.

Finally, FRA reiterates the requirement in § 245.101 that each railroad is required to include on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees, information identifying all subsidiary railroads for which it is reporting and to provide a breakdown of train miles, road miles, and employee hours for each of these subsidiaries. Again, this information shall be reported at the same level of aggregation as it is reported under part 225 and other FRA reporting requirements. Subsidiaries reporting part 225 data independent of their controlling entity should also report user fee data independent of their controlling entity.

Section 245.103 requires each railroad subject to this part to maintain adequate records supporting the information submitted to FRA regarding the railroad's train miles, road miles, and employee hours for the previous calendar year. No changes have been made to this section as included in the NPRM.

Section 245.105 requires relevant records to be maintained for three years. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.201 describes the method FRA will use for calculating the user fee to be paid by each railroad subject to this part for fiscal years 1992 through 1995. As noted in the discussion above, the only change made to this section involves altering the assessment formula from fifty percent train miles, thirty percent road miles, and twenty percent employee hours to fifty five percent train miles, thirty five percent road miles, and ten percent employee hours.

Section 245.301 outlines the procedures that will be employed by FRA in collecting railroad user fees. FRA has eliminated the Preliminary Assessment Notice to be provided to each railroad. Providing an estimated assessment to each railroad proved to be administratively burdensome and created unnecessary confusion for many railroads. In publishing a summary of its calculations in the **Federal Register**, FRA will provide the information that can be used by the railroads to calculate an estimated user fee bill and to make necessary plans and budget adjustments in a more efficient and effective manner. FRA plans to publish this notice after it has had an opportunity to collect and collate all of the user fee reporting forms from the individual railroads.

Section 245.303 provides that each railroad subject to this part has an obligation to pay to FRA an annual railroad user fee. Payments are due to FRA no later than thirty days after the Assessment Notice is mailed. FRA has added a requirement that railroads making aggregate payments for one or more subsidiaries or affiliates must return the payment records received from FRA for each of the subsidiaries or affiliates and must also list all applicable bill numbers with the payment. FRA has also added a new subsection (b) noting that the responsible entity, defined to mean the railroad subject to this part as of December 31 of the applicable fiscal year, is responsible for paying the fee for that year. In the event all or a portion of the railroad is sold during the year, it will be the responsibility for the parties involved in the transaction to prorate the bill among themselves in an appropriate manner. FRA lacks the data to accomplish this task on its own and believes that the individual entities involved in the transaction are best able to make a proper allocation. A further

discussion of this topic was included under § 245.5 above.

Finally, FRA has added a new subsection (c) indicating that no user fee will be due from railroads that properly report both zero train miles and zero road miles on FRA Form 6180.91. This situation can occur in instances where railroads have no operations (reporting zero train miles) and lease the track they own to other operators (under § 245.101(d)(1) the lessee railroad reports the road miles for leased track). Under the interim final rule, these railroads qualified as railroads subject to user fees and were assessed a minimum fee. FRA has concluded that assessing a user fee on these entities is not appropriate since it results in effectively a double counting. The road miles are reported by the lessee railroad and the user fee paid by the lessee railroad includes a charge for relevant road miles.

V. Regulatory Impact

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

These final regulations have been evaluated in accordance with existing regulatory policies. They are considered to be nonmajor under Executive Order 12291 because they would not have an annual effect on the economy of $100 million or more, produce a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or produce significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These final regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures (the "Procedures") (44 FR 11034, February 26, 1979) because of the widespread interest within the railroad industry in the user fee program.

FRA has determined that these regulations will not in and of themselves significantly alter the fees to be paid by individual railroads or produce a change in the total user fees to be collected. In fiscal year 1991, approximately 600 railroads were assessed railroad user fees. The Class I railroads accounted for about 81 percent of the total fees, Class II railroads about 6 percent of the fees, Class III railroads about 6 percent of the fees, and the major passenger rail carriers about 7 percent. Under the final rule, the user fees to be paid by small and medium size railroads (Class II and Class III railroads) would be reduced while the share to be paid by Amtrak and the other major passenger rail carriers would be larger. FRA has determined that under the final rule the Class II and Class III railroads would be responsible for approximately 9 percent of the total fees while the major passenger railroads would be responsible for approximately 9 percent of the fees.

FRA noted in the NPRM that by operation of law the railroad user fees collected in fiscal years 1992 through 1995 will be greater than the amount collected in fiscal year 1991 because the fiscal year 1991 collections involved reimbursement for FRA's safety enforcement costs for only seven months of the year. In addition, the user fees to be collected in fiscal years 1992 through 1995 will include some railroad safety enforcement costs that were not included in the fiscal year 1991 assessments. Both of these circumstances were also discussed in FRA's original notice of proposed rulemaking.

In accordance with section 10(e) of the Procedures, FRA has prepared a Regulatory Evaluation, which includes a brief analysis of the economic consequences of the revisions to the user fee regulations and an analysis of the anticipated benefits and impacts. The regulatory evaluation has been included in the docket for this proceeding.

B. Regulatory Flexibility Act

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule applies only to railroads, and accordingly, would have no direct impact on small units of government (except to the extent they own or operate a railroad), or other businesses or organizations. Although a substantial number of small railroads would be subject to these regulations, the smallest of these carriers would only be subject to the minimum fee of $500 which does not constitute a significant economic impact under the Regulatory Flexibility Act. FRA has endeavored throughout this proceeding to lessen the burden on light density railroads and to avoid having railroad user fees act as an incentive to abandonment of light density lines. As noted above, the revised allocation formula included in this final rule will have a positive effect on small and medium size carriers, since Class II and Class III railroads, as a group, will pay proportionately less under this rule than under the allocation formula contained in the interim final rule.

C. Executive Order 12612—Federalism

The regulations adopted herein will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted. The regulations apply to commuter rail operators and will have an impact on state and local governments which operate or support freight or commuter rail service. However, the user fees to be paid by commuter rail operators and state-owned freight railroads are not substantial and cannot be considered to constitute a significant effect on the states involved. FRA believes that it is also worth noting that commuter rail operators and state-owned freight railroads benefit from the FRA safety and enforcement program and as such they come within the ambit of those entities which Congress determined should pay to support the cost of that program.

D. Paperwork Reduction Act

This final rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget ("OMB") for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Certain of the information collection requirements were included in the interim final rule and previously received OMB approval. FRA has endeavored to keep the burden associated with railroad user fees as simple and minimal as possible. The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Section	Brief description	Est. average time
245.101	Annual Report of Railroads Subject to User Fees.	1 to 8 ours depending on size of railroad.
245.101	Revised Annual Report.	45 minutes.
245.103	Recordkeeping	5 minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. OMB has assigned the information collection requirements that were included in the interim final rule OMB approval number 2130–0532. This final rule involves the

addition of information collection activities related to the inclusion of employee hours in the user fee annual report.

VI. Environmental Impact

FRA has evaluated these final regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These final regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 245

Railroad user fee, reporting and recordkeeping requirements.

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. Part 245 is revised to read as follows:

Part 245—RAILROAD USER FEES

Subpart A—General

Sec.
245.1 Purpose and Scope.
245.3 Application.
245.5 Definitions.
245.7 Penalties.

Subpart B—Reporting and Recordkeeping

245.101 Reporting Requirements.
245.103 Recordkeeping.
245.105 Retention of Records.

Subpart C—User Fee Calculation

245.201 User Fee Calculation.

Subpart D—Collection Procedures and Duty to Pay

245.301 Collection Procedures.
245.303 Duty to Pay.

Authority: 45 U.S.C. 431, 437, 438, 446; 49 CFR 1.49(m).

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA. For fiscal years 1992 through 1995, the user shall be calculated by FRA in accordance with § 245.101. The Secretary's authority to collect user fees shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

§ 245.3 Application.

This part applies to all railroads except those railroads whose entire operations are confined within an industrial installation.

§ 245.5 Definitions.

As used in this part—

(a) *Employee hours* means the number of hours worked by all employees of the railroad during the previous calendar year.

(b) *FRA* means the Federal Railroad Administration.

(c) *Industrial track* means a switching track serving industries, such as mines, mills smelters, and factories.

(d) *Light density railroad* means railroads with 1200 or less train-miles per road mile.

(e) *Main track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(F) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(g) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation (*See*, 45 U.S.C. 431(e)).

(h) *Responsible Entity* means the railroad subject to this part as of December 31 of the applicable fiscal year (October 1 to September 30), i.e December 31, 1991 for fiscal year 1992, December 31, 1992 for fiscal year 1993, etc.

(i) *Road miles* means the length in miles of the single or first main track, measured by the distance between terminals or stations, or both. Road miles does not include industrial and yard tracks, sidings, and all other tracks not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(j) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(k) *Sliding Scale* means the adjustment made to the mile of road of light density railroads. The sliding scale is as follows:

Train miles per road mile	Scaling factor
Up to 500	.0
501 to 750	.25
751 to 1000	.50
1001 to 1200	.75
1201 and above	1.00

The scaling factor is multiplied by the preliminary rate per road mile for each railroad for the year.

(l) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(m) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(n) *Train mile* means the movement of a train a distance of one mile measured by the distance between terminals and/or stations and includes yard switching miles, train switching miles, and work train miles. Yard switching miles may be computed on any reasonable, supportable, and verifiable basis. In the event actual mileage is not computable by other means, yard switching miles may be computed at the rate of 6 mph for the time actually engaged in yard switching service.

(o) *Yard track* means a system of tracks within defined limits used for the making up or breaking up of trains, for the storing of cars, and for other related purposes, over which movements not authorized by timetable, or by train order may be made subject to prescribed signals, rules or other special instructions. Sidings used exclusively as passing track and main line track within yard limits are not included in the term yard track.

§ 245.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty

of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.

Subpart B—Reporting and Recordkeeping

§ 245.101 Reporting requirements.

(a) Each railroad subject to this part shall submit to FRA, not later than March 1st of each year (August 1st, for the fiscal year ending September 30, 1992) a report identifying the railroad's total train miles for the prior calendar year, the total road miles owned, operated under lease, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year, and the railroad's total number of employee hours for the prior calendar year. An entity shall be considered a railroad subject to this part if it conforms to the definitions found in § 245.5(g) and (h) above. Each railroad shall report all of the data for the entire relevant calendar year whether or not its present operations generated all of the reportable data. This report shall be made on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees and shall be filed by the Responsible Entity (see § 245.5(h)). The report shall include an explanation for an entry of zero for train miles, road miles, or employee hours. Each railroad shall also identify all subsidiary railroads for which it is reporting and provide a breakdown of train miles, road miles, and employee hours for each subsidiary. Finally, each railroad shall enter its corporate billing address for the user fees, and the name, title, telephone number, date, and a signature of the person submitting the form to FRA.

(b) FRA anticipates mailing blank copies of FRA Form 6180.91—Annual Report of Railroads Subject to User Fees to each railroad during the month of January (the month of July for the fiscal year ending September 30, 1992) for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this part to obtain and submit FRA Form 6180.91 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.91 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles, as defined in § 245.5(n), shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Train miles are to be reported by both freight and passenger railroads and shall include miles run between terminals or stations, or both, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, miles run by trains consisting of deadhead passenger equipment, motor train miles run, yard-switching miles run, work train miles, and train switching miles.

(d) Road miles, as defined in § 245.5(i), shall be calculated by the railroad in accordance with the following considerations:

(1) Road miles to be reported shall include all track owned, operated under lease, or controlled by the railroad but shall not include track used under trackage rights agreements. (Note: road miles consisting of leased track are to be reported by the lessee railroad). Road miles consisting of jointly-owned track or track jointly operated under lease shall be reported by the railroad controlling operations over the track. Road miles for a given section of railroad should be reported by only one railroad.

(2) Road miles to be reported shall not include industrial track, yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service. The determination that a particular track segment qualifies as industrial track or yard track must be made on a reasonable and supportable basis. Road miles do not include track which was out of service for the entire calendar year that is the subject of the user fee report.

(e) Employee hours, as defined in § 245.5(a), shall be calculated by the railroad in accordance with the following considerations: Employees hours to be reported include the number of hours worked by all railroad employees, regardless of occupation, during the previous calendar year. Include all employees in the occupational categories shown in appendix D of the FRA Guide for Preparing Accident/Incident Reports. Employee hours do not include time paid but not actually worked, such as holidays, vacations, etc. Employee hours do not include hours worked by volunteers. Employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e. contractor employees).

(f) In computing both train miles and road miles, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(g) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.91—Annual Report of Railroads Subject to User Fees is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.91 along with a letter explaining in detail the discrepancy.

(h) Each railroad subject to this part has an obligation to assure that the information provided to FRA under this part is consistent with information provided to FRA under other reporting requirements, in particular reports submitted under 49 CFR part 225—Railroad Accidents/Incidents: Reports Classification, and Investigations. The railroad shall fully explain and resolve any discrepancies.

(i) The FRA has prepared a questionnaire entitled "Written Questionnaire on Whether Your Company Is A 'Railroad' Subject To FRA User Fee Regulations" (FRA Form 6180.90) in order to assist in determining whether certain entities meet the definition of "railroad" included in § 245.5 or constitute railroads whose entire operations are confined within an industrial installation ("plant railroads") excluded from this part under § 245.3. Copies of FRA Form 6180.90 are available from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

§ 245.103 Recordkeeping.

Each railroad subject to this part shall maintain adequate records supporting its calculation of the railroad's total train miles for the prior calendar year, total road miles as of December 31 of the previous calendar year, and the total employee hours for the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator's designee during normal business hours.

§ 245.105 Retention of records.

Each railroad subject to this part shall retain records required by § 245.103 for

at least three years after the end of the calendar year to which they relate.

Subpart C—User Fee Calculation

§ 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 15th of each year (August 1st for the fiscal year ending September 30, 1992), FRA will tabulate the total train miles, total employee hours, and total road miles for railroads subject to this part for the preceding calendar year. FRA's calculations will be based on the information supplied by railroads under § 245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations (i.e. 49 CFR parts 225 and 228). At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) Using tabulations of total train miles, total employee hours, total road miles, and the total cost of administering the Safety Act, FRA will calculate a railroad's user fee assessment as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total costs of administering the Safety Act by 0.55 and then dividing this amount (i.e., fifty-five percent of the total amount to be collected) by the total number of train miles reported to the FRA for the previous calendar year. The result will be the railroad user fee assessment rate per train mile for the current fiscal year.

(ii) The assessment rate per employee hour will be calculated by multiplying the total costs of administering the Safety Act by 0.1 and then dividing this amount (i.e., 10 percent of the total amount to be collected) by the total number of employee hours reported to the FRA for the previous calendar year. The result will be the railroad user fee rate per employee hour for the fiscal year.

(iii) The assessment rate per road mile will be calculated in three steps. First, FRA will determine a preliminary assessment rate per road mile by multiplying the total costs of administering the Safety Act by 0.35 and dividing this amount (i.e., thirty-five percent of the total amount to be collected) by the total road miles reported to FRA for the previous calendar year. Second, FRA will adjust this preliminary rate per road mile for each light density railroad by multiplying the preliminary rate by the appropriate scaling factor identified in § 245.5(h). The result will be a reduced assessment rate per road mile for light density railroads. Third, FRA will adjust the preliminary assessment rate per road mile for all railroads except light density railroads by adding to their preliminary rate an incremental amount reflecting the reallocation of the relief provided to light density railroads under step 2 using the sliding scale. The incremental amount is calculated by subtracting (A) the total amount to be collected from light density railroads after application of the sliding scale from (B) the total amount that would have been collected from light density railroads using the preliminary assessment rate and developed under step 1 and (C) dividing the resulting amount by the total road miles reported to FRA by all railroads except light density railroads. The incremental amount is then added to the preliminary assessment rate for all railroads except light density railroads to derive the assessment rate per road mile for all railroads except light density railroads. The results will be a modified assessment rate per road mile for light density railroads qualifying under step 2 and a general assessment rate applicable to all other railroads. In those cases where the computed fee is less than the defined minimum, the net increase attributable to the application of the minimum standard is not included in the reallocation process under step 3 and is instead added to total collections.

(b) The user fee to be paid by each covered railroad is the greater of $500.00 or the sum of the railroad's train miles times the assessment rate per train mile, the railroad's employee hours times the assessment rate per employee hour, and the railroad's road miles times the applicable assessment rate per road mile.

Subpart D—Collection Procedures and Duty to Pay

§ 245.301 Collection procedures.

(a) After March 15th of each year (August 15th for the fiscal year ending September 30, 1992), FRA will publish in the **Federal Register** a notice containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale). The information published by FRA will be sufficient to enable each railroad to calculate its estimated user fee bill for the fiscal year on the basis of the train mile, employee hour, and road mile information provided by the railroad to FRA.

(b) After June 1st of each year, (August 15th for the fiscal year ending September 30, 1992), FRA will provide to each covered railroad a notice (the "Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, the assessment rate per road mile (as adjusted by the sliding scale), the train miles, employee hours, and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a statement and payment record form. FRA will mail the Assessment Notice sufficiently in advance of the end of the fiscal year in order to allow all collections to be completed prior to the end of the fiscal year. FRA will mail the Assessment Notice to the billing address designated by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

§ 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full shall be received by FRA no later than thirty days after the Assessment Notice is mailed. Payment is made only when received by FRA. Payments in excess of ten thousand dollars ($10,000.00) shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the Assessment Notice. Payments of ten thousand dollars or less shall be by check or money order payable to the Federal Railroad Administration. The payment shall be identified as the railroad's user fee by noting it with the User Fee Bill Number as assigned by FRA and by returning the payment record received with the Assessment Notice. Payment shall be sent to the address stated in the assessment notice. Any railroad making an aggregate payment for one or more subsidiaries or affiliates should return the payment records for each and list all applicable Bill Numbers with the payment.

(b) The responsibility for paying the user fee rests with the responsible entity (see § 245.5(h)). Parties involved in purchase and sale transactions of railroad(s) or portions of a railroad shall be responsible for allocating the user fee amongst the interested entities in an appropriate fashion. FRA will not prorate user fee bills.

(c) No user fee will be collected from railroads that properly report zero train

miles and zero road miles on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

(d) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures (49 CFR part 89).

Issued in Washington, DC, on July 2, 1992.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 92-16026 Filed 7-8-92; 8:45 am]

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federal register

Thursday
July 9, 1992

Part VI

Environmental Protection Agency

Thirtieth Report of the Interagency Testing Committee to the Administrator; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-41037; FRL-4071-4]

Thirtieth Report of the Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments Regarding Priority Testing List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its 30th Report to the Administrator of EPA on May 29, 1992. As noted in this Report, which is included with this notice, the Committee revised the Priority Testing List by adding one chemical group, the siloxanes, and four chloroalkyl phosphates: 1,2-ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate (TCIEP); 2,2-bis(chloromethyl)-1,3-propanediyl tetrakis(2-chloroethyl) phosphate (TCEBP); oxydi-2,1-ethanediyl tetrakis(2-chloroethyl) phosphate (TCEDP); and 2-chloro-1-methylethyl bis(2-chloropropyl) phosphate (DCPCEP). These chemicals are recommended. There are no designated or recommended with intent-to-designate chemicals.

The ITC removed two chemicals from the Priority Testing List in the 30th Report as a result of EPA actions. Sodium cyanide and acrylic acid, designated in the 27th ITC Report, were removed because EPA issued a consent order for sodium cyanide on December 17, 1991 (56 FR 65442), and for Acrylic acid on March 4, 1992 (57 FR 7656).

EPA invites interested persons to submit written comments on the Report.

DATES: Written comments should be submitted by August 10, 1992.

ADDRESSES: Send four copies of written submissions to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE G004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41037; FRL-4071-4). The public record supporting this action, including comments, is available for public inspection in Rm. NE G004 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's 30th report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 260l et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority Testing List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's 30th Report. The Report was received by the Administrator on May 29, 1992, and is included in this Notice. The Report adds one chemical group and 4 chloroalkyl phosphates to the TSCA section 4(e) Priority Testing List.

II. Written and Oral Comments

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the **Federal Register** adding the substances recommended in the ITC's 30th Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. That notice will also add the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's 30th Report notes the addition of one chemical group and 4 chloroalkyl phosphates to the Priority Testing List, and the removal of sodium cyanide and acrylic acid from the List. The current Priority Testing List contains 24 chemicals and 23 chemical groups, 11 of these chemicals are designated.

Authority: 15 U.S.C. 2603.

Dated: June 30, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

Thirtieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

The U.S. Congress created the Interagency Testing Committee (ITC) under Section 4(e) of the Toxic Substances Control Act (TSCA) to recommend chemicals and chemical groups to the Administrator of the U.S. Environmental Protection Agency (EPA) for testing under Section 4(a) of TSCA and to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. Congress directed the Committee to: (1) organize their recommendations as the Priority Testing List, (2) revise the Priority Testing List at least every 6 months and (3) transmit these revisions to the EPA Administrator for publication in the **Federal Register**. During this reporting period (11/28/91 to 5/27/92), the Committee revised the TSCA section 4(e) Priority Testing List by adding two chemical groups and removing two chemicals.

Recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted the Food and Drug Administration (FDA) to request that the Committee review the health effects of siloxanes. The Committee added a group of 56 siloxanes to the Priority Testing List and recommended them for autoimmune effects, cancer, reproductive effects and developmental toxicity testing and for epidemiological studies.

The Committee also added a group of four chloroalkyl phosphates to the Priority Testing List and recommended them for screening tests, because there are few publicly-available data and because these chemicals are structurally similar to five chloroalkyl phosphates that were recommended in the Committee's 23rd Report.

The Committee removed sodium cyanide and acrylic acid from the Priority Testing List because EPA implemented the Committee's testing recommendations.

The Committee reviewed 350 studies on the 5 chloroalkyl phosphates recommended in the Committee's 23rd Report and deferred them to provide an opportunity for manufacturers to submit exposure data and to discuss voluntary testing.

During this reporting period, a few Committee members participated in EPA's, National Cancer Institute (NCI's) and National Toxicology Program (NTP's) chemical selection meetings, met with the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association to discuss completed, ongoing and planned testing of chemical groups and attended the March 18, 1992 U.S. House of Representatives and March 25, 1992 U.S. Senate hearings on TSCA reauthorization. The Committee's Executive Director coordinated testing with the National Toxicology Program, coordinated responses to the Agency for Toxic Substances and Disease Registry's (ATSDR) request for comments on Priority Data Needs and presented an invited paper to the American Society for Testing and Materials on the role of the Committee's testing recommendations in facilitating test method development.

Also during this reporting period, the Committee initiated efforts to develop a Priority Testing Candidate List of chemicals and chemical groups under consideration, conducted a partial review of glycol ethers' reproductive effects data, and formed two subcommittees to review non-public data on ethoxylated and imidazolium quaternary ammonium compounds and to review chemicals nominated by the Occupational Safety and Health Administration (OSHA).

Additions to the Priority Testing List

Additions to the Priority Testing List are presented, together with the types of testing recommended, in Table 1.

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY TESTING LIST

Group	CAS No.	Chemical	Action	Date	Recommended Tests
Siloxanes			Recommended	5/92	Physical and chemical properties: None, at this time.
					Chemical fate: None, at this time.
					Health effects: Autoimmune effects, reproductive effects, developmental toxicity, cancer and epidemiology studies
					Ecological effects: None, at this time.
Chloroalkyl Phosphates			Recommended	5/92	Physical and chemical properties: melting point, octanol-water partition coefficient, vapor pressure and water solubility.
					Chemical fate: Aerobic biodegradation and hydrolysis rate screening.
					Health effects: Acute toxicity screening.
					Ecological effects: Algal toxicity, fish, aquatic and benthic invertebrate acute toxicity screening.

TSCA Interagency Testing Committee

Statutory member Agencies and Their Representatives

Council on Environmental Quality
Charles Herrick, member (see Note 1)

Department of Commerce
Willie E. May, member
Edward White, alternate (see Note 2)

Environmental Protection Agency
James B. Willis, member
John S. Leizke, alternate

National Cancer Institute
Thomas P. Cameron, member
Richard Adamson, alternate

National Institute for Environmental Health Sciences
Errol Zeiger, member
James K. Selkirk, alternate

National Institute for Occupational Safety and Health
Robert W. Mason, member
Henryka Nagy, alternate (see Note 3)

National Science Foundation
Carter Kimsey, member and Chairperson
Jarvis L. Moyers, alternate

Occupational Safety and Health Administration
Christine Whittaker, member and vice chairperson
Surender Ahir, alternate

Liaison Agencies and Their Representatives

Agency for Toxic Substances and Disease Registry
Sharunda Buchanan, member

Consumer Product Safety Commission
Val Schaeffer, member (see Note 5)
Lakshmi C. Mishra

Department of Agriculture
Donald Derr, member
Ralph T. Ross, alternate (see Note 6)

Department of Defense
Randall S. Wentsel, member

Department of the Interior
Clifford P. Rice, member
Barnett A. Rattner, alternate

Department of Transportation
George Cushmac, member
James O'Steen, alternate

Food and Drug Administration
Edwin J. Mathews, member (see Note 7)
Raju Kammula, alternate

National Library of Medicine
Vera Hudson, member

National Toxicology Program
Victor A. Fung, member (see Note 8)

U.S. International Trade Commission
James Raftery, member
Edward Matusik, alternate

Committee Staff

John D. Walker, Ph.D., Executive Director
Norma S.L. Williams, Executive Assistant

Support Staff

Mary Ellen Levine, Office of the General Counsel, EPA (see Note 9)

Notes:
1. Appointed on February 4, 1992.
2. Appointed on February 6, 1992.
3. Appointed on November 15, 1991.
4. Appointed on November 22, 1991.
5. Appointed on April 2, 1992.
6. Appointed on December 19, 1991.
7. Appointed on December 26, 1991.
8. Appointed member on March 20, 1992.
9. Appointed on January 7, 1992.

The Committee acknowledges the assistance and support given by the staff of Syracuse Research Corp. (technical support contractor) and

personnel of the EPA Office of Pollution Prevention and Toxics.

Chapter 1—Introduction

1.1 *Background.* Background on the TSCA Interagency Testing Committee (ITC) was provided most recently in chapter 1.1 of the 29th Report that was submitted to the EPA Administrator on November 27, 1991 (56 FR 67424, December 30, 1991).

1.2 *Committee's previous reports.* Twenty-nine previous Reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register**. In these 29 Reports, the Committee recommended testing for 124 chemicals and 39 chemical groups. Chemical groups were defined most recently in chapter 1.2 of the 29th Report.

1.3 *Committee's activities during this reporting period.* The Committee's activities during this reporting period (November 28, 1991 to May 27, 1992) are described below.

1.3.a *Chemical and chemical group selections.* During this reporting period, the Committee initiated efforts to develop a Priority Testing Candidate List of chemicals and chemical groups under consideration, reviewed data on siloxanes and chloroalkyl phosphates, conducted a partial review of glycol ethers' reproductive effects data, and formed two subcommittees to review non-public data on ethoxylated and imidazolium quaternary ammonium compounds and to review chemicals nominated by the Occupational Safety and Health Administration.

Siloxanes and chloroalkyl phosphates are recommended, not designated, because the Committee wants to review the TSCA section 8(a) and 8(d) information and any use exposure and release information as well as any physical chemical property information that is voluntarily submitted, before deciding whether to designate or withdraw these chemicals for testing. These recommendations are consistent with the Committee's practice of distinguishing between data needs and data gaps and recommending testing for chemicals with data needs and of comprehensively evaluating chemicals and chemical groups as discussed in Chapter 1.3.a of the ITC's 27th and 29th Reports.

Some chemical groups on the Priority Testing Candidates List that the Committee will be considering in the future were listed in Chapter 1.3.b of the 29th Report.

1.3.b *Comprehensive information processing.* The Committee's approach to comprehensive information processing is described in Chapter 1.3.b of the 29th Report.

1.3.c *Information dissemination.* To promote public understanding of the Committee's functions, some of the activities that occurred during this reporting period are briefly described below.

Some Committee Members and staff attended recent hearings on TSCA reauthorization. On March 18, 1992 hearings were held before the House of Representatives Subcommittee on Environment, Energy and Natural Resources, chaired by Congressman Mike Synar (D-OK). On March 25, 1992 hearings were held before the Senate Environment and Public Works Subcommittee, chaired by Senator Harry Reid (D-NV). EPA discussed its revitalized chemical testing program.

At the invitation of the Chemical Manufacturers Association, the Committee's Chairperson and Executive Director met with the chloroalkyl phosphate manufacturers on April 1, 1992 to discuss completed, ongoing and planned testing and the status of the ITC's review of chloroalkyl phosphates. The manufacturers were asked to supply samples of chloroalkyl phosphates for EPA sponsored fish neurotoxicity tests. They were encouraged to provide information on the uses of chloroalkyl phosphates, the levels of chloroalkyl phosphates that might result from processing and use and information that might explain the low (parts per billion) environmental concentrations of chloroalkyl phosphates. This exposure information is needed to provide some perspective for the chloroalkyl phosphate toxicity data. Additional meetings with the chloroalkyl phosphate manufacturers are planned.

At the invitation of the American Society for Testing and Materials (ASTM), the ITC's Executive Director presented a paper at ASTM's Second Symposium on Environmental Toxicology and Risk Assessment. The Symposium was convened on April 26–29, 1992 in conjunction with ASTM's semi-annual meeting to develop and revise ASTM methods for chemical fate and ecological effects testing. The Executive Director discussed ITC's role in facilitating development of chemical fate and ecological effects test methods.

1.3.d *Information coordination.* Congress directed the Committee to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. This directive promotes conservation of U.S. government chemical testing resources by eliminating unnecessary and duplicative testing.

At the request of the National Toxicology Program (NTP), TSCA Section 8(d) reports on health effects of bis-(4-chlorophenyl) sulfone (CAS No. 80-07-9) were provided to facilitate NTP's evaluation of this chemical. The TSCA Section 8(d) reports were submitted to the EPA as a result of the Committee's recommendation for physical and chemical property testing of sulfones in their 27th Report. After the 27th Report was published, the NTP's Executive Committee deferred testing bis-(4-chlorophenyl) sulfone for subchronic and mutagenic effects until the TSCA Section 8 information could be reviewed. NTP is currently reviewing this TSCA Section 8 information.

At the request of the Agency for Toxic Substances and Disease Registry (ATSDR), comments were provided on ATSDR's Priority Data Needs for a number of the 38 hazardous substances (41 CAS numbered chemicals) that were published in the October 17, 1991 **Federal Register** (56 FR 52178). The EPA and NTP provided comments during development of the Priority Data Needs. The ITC's comments are included in ATSDR's Docket number 42. These comments are summarized below. The National Cancer Institute described completed and ongoing studies on arsenic, cadmium, chromium, nickel and polychlorinated biphenyls. The Department of Interior described ongoing wildlife studies on cyanide, polychlorinated biphenyls and selenium. The ITC staff determined that the Committee had considered about 75% of ATSDR's 275 hazardous substances, had recommended about 70 of them for testing, had taken action on 33 of the 38 hazardous substances for which ATSDR determined Priority Data Needs, and had designated 3 of the 38 substances for testing. For the 33 substances on which the ITC had taken action, there may be existing studies that could satisfy ATSDR's Priority Data Needs. For the 3 ITC designated substances, 33 studies were identified that may satisfy ATSDR's Priority Data Needs and 3 studies were identified that may provide useful information related to ATSDR's Priority Data Needs.

In an effort to avoid duplication of effort, ATSDR is considering the Committee's comments and will formally respond to them along with other comments received on the 38 substances. The studies received by ATSDR from the Committee will be screened and reviewed before the Priority Data Needs are finalized.

1.3.e *Referrals.* During this reporting period, the Committee did not refer any

chemicals to member agencies or other organizations for testing consideration.

1.3.f *Deferrals.* During this reporting period, the Committee deferred the five chloroalkyl phosphates recommended in the 23rd Report because of an interest on the part of industry to voluntarily take action on these chemicals. The Chemical Manufacturers Association (CMA) and several chloroalkyl phosphate producers have approached the ITC and EPA to discuss voluntary testing for certain of the chloroalkyl phosphates. It is the interest of the ITC and ITC member agencies to ensure that the hazard of these chemicals is well characterized; additionally, the Committee believes that exposures to these chemicals should be better characterized. The Committee encourages CMA and the chloroalkyl phosphates' producers to offer a formal proposal to EPA, which may result in a testing consent order or other binding agreement through a public process, to develop hazard and exposure data. The Committee also believes that, considering the potential cancer risk of these chemicals, voluntary exposure controls on the part of industry may be appropriate. The Committee is deferring these five chloroalkyl phosphates pending the results of future discussions with industry.

1.3.g *Removals.* Two chemicals designated in the Committee's 27th Report were removed from the Priority Testing List, because EPA implemented the Committee's testing recommendations. On December 17, 1991 and March 4, 1992, EPA published Consent Orders for sodium cyanide (56 FR 65442) and acrylic acid (57 FR 7656), respectively. The most recent table of removals from the Priority Testing List was published in the Committee's 29th Report. As a result of the removals made during this reporting period, 100 chemicals and 18 chemical groups have been removed from the ITC's Priority Testing List.

1.4 *The TSCA section 4(e) Priority Testing List.* Under Section 4(e)(1)(B) of TSCA, Congress directed the Committee to revise the Priority Testing List at least every 6 months and transmit the revised List to the EPA Administrator. Under this authority, the Committee is revising the Priority Testing List by recommending two chemical groups (Table 1).

The Priority Testing List includes 24 chemicals and 23 chemical groups that have been recommended or designated for testing (Table 2). Individual chemicals in Priority Testing List chemical groups are listed in Table 1 of the 24th Report and in the paragraphs following Table 1 of the 26th, 27th, 28th and 29th Reports. For this 30th Report, the individual chemicals in Priority Testing List chemical groups are listed in tables that are included in chapters 2.4.a and 2.4.b. Lists of individual chemicals are provided to minimize any ambiguities associated with TSCA Section 8(a) and 8(d) reporting requirements.

Combining the 100 chemicals and 18 chemical groups that have been removed from the ITC's Priority Testing List with the 24 chemicals and 23 chemical groups currently on the Priority Testing List, reveals that the Committee has recommended or designated 124 chemicals and 41 chemical groups for testing since their first meeting in February 1977.

TABLE 2.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Report	Date	Chemical/Group	Action
22	May 1988	Ethoxylated quaternary ammonium compounds	Recommended
22	May 1988	Imidazolium quaternary ammonium compounds	Recommended
23	November 1988	Tetrakis(2-chloroethyl)ethylene diphosphate	Recommended with intent-to-designate
23	November 1988	Tris(1,3-dichloro-2-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(1-chloro-2-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(2-chloro-1-propyl) phosphate	Recommended with intent-to-designate
23	November 1988	Tris(2-chloroethyl)-phosphate	Recommended with intent-to-designate
23	November 1988	Butyraldehyde	Recommended
23	November 1988	Brominated flame retardants	Recommended
26	May 1990	Isocyanates	Recommended with intent-to-designate
26	May 1990	Brominated flame retardants	Recommended
26	May 1990	Alkyl phosphates	Recommended
27	November 1990	Acetophenone	Designated
27	November 1990	Phenol	Designated
27	November 1990	*N,N*-Dimethylaniline	Designated
27	November 1990	Ethylacetate	Designated
27	November 1990	2,6-Dimethylphenol	Designated
27	November 1990	Aldehydes	Recommended with intent-to-designate
27	November 1990	2,4-Dinitrophenol	Recommended
27	November 1990	3,4-Dimethylphenol	Recommended
27	November 1990	*N*-phenyl-1-naphthylamine	Recommended
27	November 1990	Sulfones	Recommended
27	November 1990	Substantially produced chemicals in need of subchronic tests.	Recommended
28	May 1991	Acetone	Designated
28	May 1991	*n*-Butanol	Designated
28	May 1991	Isobutanol	Designated
28	May 1991	Di-(2-ethylhexyl)adipate	Designated
28	May 1991	Dimethyl terephthalate	Designated
28	May 1991	Thiophenol	Designated
28	May 1991	*m*-Dinitrobenzene	Recommended
28	May 1991	Allyl alcohol	Recommended
28	May 1991	2,4-Dichlorophenol	Recommended
28	May 1991	Alkynes	Recommended
28	May 1991	Nitroalcohols	Recommended
28	May 1991	Phosphoniums	Recommended
28	May 1991	Hydrazines	Recommended
28	May 1991	Oxiranes	Recommended
28	May 1991	Alkoxysilanes	Recommended
28	May 1991	Aldehyde hydrates	Recommended

TABLE 2.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Date	Chemical/Group	Action
28	May 1991	Propylene glycol ethers and esters	Recommended
28	May 1991	Methyl ethylene glycol ethers	Recommended
28	May 1991	Isothiocyanates	Recommended
28	May 1991	Cyanoacrylates	Recommended
29	November 1991	White phosphorus	Recommended
29	November 1991	Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers	Recommended
30	May 1992	Siloxanes	Recommended
30	May 1992	Chloroalkyl phosphates	Recommended

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority Testing List two chemical groups (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the data needs of Member Agencies.

2.2 *Designated chemicals.* None.

2.3 *Recommended with intent-to-designate chemicals.* None.

2.4 *Recommended chemicals*--2.4.a Siloxanes.

I. Rationale for Recommendation

Recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted the Food and Drug Administration (FDA) to request that the Committee review the health effects of siloxanes. The Committee added a group of 56 siloxanes to the Priority Testing List (Table 3). The Committee recommended siloxanes for testing because of FDA's request, because production volumes are substantial, because of uncertainties related to human exposure, and because of the paucity of publicly-available health effects data for these substances. By recommending these chemicals, the Committee is providing manufacturers, processors, and distributors the opportunity to submit data under TSCA Section 8 and to voluntarily submit physical and chemical property data and use exposure information.

TABLE 3.—RECOMMENDED SILOXANES

CAS No.	Chemical Name
107-46-0	Hexamethyldisiloxane
107-50-6	Tetradecamethylcyloheptasiloxane
107-51-7	Octamethyltrisiloxane
107-52-8	Tetradecamethylhexasiloxane
107-53-9	Tetracosamethylundecasiloxane
141-62-8	Decamethyltetrasiloxane
141-63-9	Dodecamethylpentasiloxane
540-97-6	Dodecamethylcyclohexasiloxane
541-01-5	Hexadecamethylheptasiloxane
541-02-6	Decamethylcyclopentasiloxane
541-05-9	Hexamethylcyclotrisiloxane
546-56-5	Octaphenylcyclotetrasiloxane
556-67-2	Octamethylcyclotetrasiloxane
556-68-3	Hexadecamethylcyclooctasiloxane
556-69-4	Octadecamethyloctasiloxane
556-70-7	Docosamethyldecasiloxane
556-71-8	Octadecamethylcyclononasiloxane
999-97-3	Hexamethyldisilazane
2370-88-9	Tetramethylcyclotetrasiloxane
2374-14-3	Trifluoropropylmethylcyclotrisiloxane
2471-08-1	Hexacosamethyldodecasiloxane
2471-09-2	Octacosamethyltridecasiloxane
2471-10-5	Triacontamethyltetradecasiloxane
2471-11-6	Dotriacontmethylpentadecasiloxane
2554-06-5	Methylvinylcyclosiloxane
2627-95-4	Tetramethyldivinyldisiloxane
2652-13-3	Eicosamethylnonasiloxane
7013-67-8	Non-end blocked siloxanes
9004-73-3	Methylpolysiloxane
9006-65-9	Dimethicone
9016-00-6	Polydimethylsiloxane
18766-38-6	Docosamethylcycloundecasiloxane
18772-36-6	Eicosamethylcyclodecasiloxane
18844-04-7	Hexatriacontamethylheptadecasiloxane
18919-94-3	Tetracosamethylcyclododecasiloxane
23523-12-8	Hexatriacontamethylcyclooctadecasiloxane
23523-14-0	Triacontamethylcyclopentadecasiloxane
23732-94-7	Hexacosamethylcyclotridecasiloxane
36938-50-8	Tetratriacontamethylhexadecasiloxane
36938-52-0	Octatriacontamethyloctadecasiloxane
63148-62-9	Dimethyl silicones and siloxane
67762-90-7	Dimethyl silicones and siloxanes, reaction products with silica
67762-94-1	Dimethylmethylvinylsiloxane

TABLE 3.—RECOMMENDED SILOXANES—Continued

CAS No.	Chemical Name
68037-59-2	Dimethylhydropolysiloxane
68037-74-1	Dimethylpolysiloxanes
68083-14-7	Dimethyldiphenylsiloxane
69430-24-6	Cyclopolydimethylsiloxane
NA[1]	Tetracontamethylnonadecasiloxane
NA[1]	Octacosamethylcyclotetradecasiloxane
NA[1]	Dotetracontamethyleicosasiloxane
NA[1]	Tetracontamethylcycloeicosasiloxane
NA[1]	Octatriacontamethylcyclononadecasiloxane
NA[1]	Tetratriacontamethylcycloheptadecasiloxane
NA[1]	Dotriacontamethylcyclohexadecasiloxane
NA[1]	Polymethyloctadecylsiloxane
NA[1]	Dimethylmethyltrifluoropropylsiloxane

[1] NA = not assigned.

II. Summary of Recommended Tests

Siloxanes are recommended for autoimmune effects, cancer, reproductive effects and developmental toxicity testing and for epidemiological studies (Table 1).

III. Supporting Information

A. *Background.* On November 6, 1984, the Committee designated octamethylcyclotetrasiloxane (OMCTS) for chemical fate and ecological effects testing in the Committee's 15th report (49 FR 46931, November 29, 1984). On May 31, 1991, at the request of EPA, the Committee recommended alkoxysiloxanes for ecological effects testing in the Committee's 28th report (56 FR 41212, August 19, 1991). While health effects testing was not recommended previously, recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted FDA to request that the Committee review the health effects of siloxanes. The Committee is also concerned with widespread human exposure and environmental release of siloxanes. Most of the recommended chemicals were chemicals identified by FDA. At the request of FDA, a few structurally related methyl siloxanes were identified using the Committee's substructure-based chemical selection expert system (SuCSES). SuCSES was also used to identify structural homologs for other siloxanes identified by FDA, but FDA and the Committee did not request that they be recommended for testing at this time.

B. *Physical and chemical properties.* The Committee found limited information on measured physical and chemical properties for the siloxanes listed in Table 3: 20 log octanol/water partition coefficients (generated using High Pressure Liquid Chromatography), 1 measured log octanol/water partition coefficient, 15 melting points, 16 boiling points, 1 water solubility, 13 vapor pressures, and 1 Henry's Law constant (Refs. 19, 27, 31, 43, and 61).

C. *Exposure information—production/use/disposal/exposure/release.* The siloxanes in Table 3 are commercially available or have been identified in various medical uses.

Siloxanes have numerous medical, industrial, consumer, and military uses. They are used in the drug and pharmaceutical, construction, textile, transportation, electrical, electronic, paper and processing industries, tire, plastic, and rubber foundries, in chemical, petroleum, and gas processing as well as in medical devices, cosmetics and toiletries, food and related products, coatings, paint additives, inks, rubber and plastics, polishes, fibers, threads, and household, automotive, and institutional products (Refs. 29, 30, and 66). Siloxanes also are used in plastic and rubber lubricants, damping fluids, heat transfer fluids, oil defoamers, antifoams, viscous fluid drive clutches, speed control devices, liquid springs, dash pots, timing devices, thread and fiber lubricants, and textile softeners (Refs. 29 and 30). They are processed to meet electrical specifications for use in capacitors, pulse transformers, specialty transformers, air-borne and landbased radar equipment, and television circuit components (Refs. 29 and 30). Siloxanes are used in food applications; for example, dimethyl antifoaming agent in juices and beer (Ref. 38). Dimethylpolysiloxanes are useful as a low temperature damping medium, heat transfer medium, dielectric coolant, and a base fluid for low temperature silicone fluids (Refs. 29 and 30). Octamethylcyclotetrasiloxane is in several silicone fluids, which are used in a variety of applications including antiperspirants, facial make-up, hair sprays and skin care products, fermentation processes, instant coffee production, food washing solutions, diet soft drinks, paper coatings and sizing, waste yeast tanks, adhesives, textile sizes, vacuum distillations, deasphalting, brine units, boiler treatments, detergent manufacture, effluent treatments, industrial cleaning solutions, waste water treatment facilities, surfactants, and in window cleaners and panel polishes (Refs. 56 and 66). In 1982, octamethylcyclotetrasiloxane, decamethylcyclopentasiloxane, and dodecamethylcyclohexasiloxane were being evaluated for use in a variety of consumer and industrial products, including household and car care products, specialty wax preparations, other chemical specialty formulations, and coatings (Refs. 66). Decamethylcyclopentasiloxane is used in cosmetics and toiletries, as a vehicle and end blocking agent in antiperspirants and in aerosol products containing insoluble powders (Refs. 29 and 66). Hexamethyldisiloxane is used in cosmetic and personal care product formulations, in the production of octamethylcyclotetrasiloxane, as an adhesion promotor-priming agent for photolithography applications, and as an end blocking agent in the production of fluorosilicone oils (Refs. 7, 31, and 40).

Human exposure—medical. Exposure to siloxanes may occur because of uses as medical fluids, resins, gels and elastomers. Fluid siloxanes are used as lubricants in disposable syringes. Resins, gels and elastomers are used as implants for the augmentation and reconstruction of soft tissues such as breast and testicular tissues. Siloxanes are also used to fabricate tubal occlusion devices for female sterilization, encasement of pacemakers and electrical leads, heart valves, arteriovenus shunts, catheters, urethral stents, penile prothesis, prosthetic finger joints, artifical tendons, and intraocular lenses as well as to construct elastomers that are used as implanted drug delivery systems.

Occupational. The National Occupational Exposure Survey (NOES) conducted during 1981–1983 by NIOSH reported that 14,234 workers were potentially exposed to hexamethyldisiloxane, 367,371 workers were potentially exposed to dimethyl silicones and siloxanes, 935 workers were potentially exposed to octamethylcyclotetrasiloxane, 4,386 workers were potentially exposed to dimethyldiphenylsiloxane, and 6,903 workers were potentially exposed to reaction products of dimethyl silicones and siloxanes with silica (Refs. 50).

Monitoring. Atomic absorption analyses of organic extracts identified dimethylpolysiloxanes in various fruit juices (orange, apple, pineapple, apricot, tomato, lemon, grapefruit, mango, and apricot juice) (Ref. 38). Dimethylpolysiloxanes were quantitatively detected in 51 of 98 samples above the detection limit of 0.2 ppm; 14 of the 51 samples were above 10 ppm and 1 sample had a dimethylpolysiloxanes content of 152 ppm.

Dodecamethylcyclohexasiloxane was identified in drinking water concentrates from New Orleans, LA and Seattle, WA and decamethylcyclopentasiloxane was identified in drinking water concentrates from New Orleans, LA and Cincinnati, OH (Ref. 44).

Based on a method where airborne particles are collected on Teflon filters, extracted with an organic solvent, and then analyzed by pyrolysis gas chromatography/mass spectrometry (GC/MS), polydimethylsiloxanes were frequently detected in indoor airborne particles, especially in office buildings where many silicone-containing products were present, such as electrical contact cleaners, photocopiers, and electronic equipment (Ref. 76). Decamethylcyclopentasiloxane was measured in 29 air samples (0.3–12.4 $\mu g/m^3$) from office buildings located in 7 cities, dodecamethylcyclohexasiloxane was measured in 5 air samples (0.4–16.5 $\mu g/m^3$) from office buildings located in 2 cities, hexadecamethylcyclooctasiloxane was measured in 1 air sample (38 $\mu g/m^3$) from office buildings located in 8 cities, octamethylcyclotetrasiloxane was measured in 11 air samples (0.4–37 $\mu g/m^3$) from office buildings located in 4 cities, hexamethylcyclotrisiloxane was measured in 3 air samples from one office building, and tetradecamethylcycloheptasiloxane was measured in 3 air samples (7.4–10.8 $\mu g/m^3$) from one office building (Ref. 74). Octamethylcyclotetrasiloxane has also been detected in 2 of 5 indoor air samples collected in Northern Italy, 1983–84, at concentrations of 10 $\mu g/m^3$ and 13 $\mu g/m^3$ (Ref. 9). Emissions of hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane to indoor air have been detected from new carpets (Refs. 35 and 54).

In a study designed to monitor personal exposure to volatile organic compounds, hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane were detected in air, breath, and tap water samples (Ref. 75). The national survey of human adipose tissue conducted in 1982 analyzed 46 composite samples and found decamethylcyclopentasiloxane in 28 samples and octamethylcyclotetrasiloxane in 21 samples (Ref. 53).

Environmental exposure. Based on a method where airborne particles are collected on Teflon filters, extracted with solvent, and then analyzed by pyrolysis/GC/MS, polydimethylsiloxanes have been frequently detected in outdoor airborne particles. Polydimethylsiloxane concentrations were approximately 1 ng/m^3 in outdoor airborne particles at telephone office sites in Wichita, KS, Lubbock, TX, and Neenah, WI and 2 ng/m^3 in Newark, NJ. (Ref. 76). Decamethylcyclopentasiloxane has been detected at concentrations ranging from 0.21 to 0.9 $\mu g/m^3$ in 3 outdoor air samples, octamethylcyclotetrasiloxane has been detected at concentrations ranging from 6.6 to 22.6 $\mu g/m^3$ in 3 outdoor air samples taken from outside an office building in Newark, NJ, and hexamethylcyclotrisiloxane has been detected at concentrations ranging from 0.9 to 149 $\mu g/m^3$ in 139 outdoor air samples from 8 locations (Ref. 74).

Hexamethylcyclotrisiloxane was detected in 4 of 6 water samples collected from Lake Pontchartrain, LA, in 1980; concentrations ranged from 0.02 to 0.3 $\mu g/L$, and octamethylcyclotetrasiloxane was detected in 1 of 3 samples at 0.03 $\mu g/L$ (Ref. 48). Octamethylcyclotetrasiloxane and dodecamethylpentasiloxane were found in the influent to a sewage treatment facility in Singapore, while only octamethylcyclotetrasiloxane was found in the post-aerated wastewater and sludge (Ref. 42). Octamethylcyclotetrasiloxane and hexamethylcyclotrisiloxane have been detected as volatile emissions from refuse landfills (Ref. 41).

D. *Chemical fate information.* The Committee is not recommending chemical fate testing at this time because it wants to review data developed under TSCA Section 4 for octamethylcyclotetrasiloxane and any chemical fate data that may be submitted under TSCA Section 8(d).

E. *Health effects information.* Health effects data were located for 9 of the 52 recommended siloxanes: hexamethyldisiloxane, octamethyltrisiloxane, dodecamethylpentasiloxane, decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclo tetrasiloxane, trifluoropropylmethylcyclotrisiloxane, dimethicone, and polydimethylsiloxane.

Human studies. Available data suggest that polydimethylsiloxane and octamethylcyclotetrasiloxane are not absorbed through intact human skin (Refs. 10, 23, and 34), and that polydimethylsiloxane was not absorbed by the gastrointestinal tract (Refs. 1, 4, and 62).

There have been human case reports of adverse effects from release of polydimethylsiloxane fluid into body tissues. These effects include granuloma formation, ulcer development and acute and latent pneumonitis illness (Refs. 5, 6, 47, and 55). In some cases, adverse effects did not develop for years. The granulomas appeared to be similar to typical foreign-body reaction masses (Refs. 64, 65, and 77), and cases have been reported where these granulomas developed at sites distant from the site of injection of the liquid silicone fluid (Ref. 25). Case reports have also suggested that silicone from breast implants and other prosthetic devices can produce symptoms of autoimmune disease (Refs. 3, 26, 59, and 73). These symptoms are diverse and are similar to scleroderma, systemic lupus erythematosus, and systemic rheumatic disease, and have been described in the literature as human adjuvant disease (Ref. 59). An epidemiologic study of workers exposed to silicones for at least 5 years and followed for 19 years reported a higher than expected incidence of cancers of the skin, large intestine and lung, but a decrease in mortality due to cancers of all types (Ref. 28).

Laboratory studies. Available data suggest that hexamethyldisiloxane and octamethylcyclotetrasiloxane are not absorbed through animal skin (Refs. 10, 15, and 16). Oral administration of octamethylcyclotetrasiloxane to monkeys and rats resulted in gastrointestinal absorption (Refs. 20 and 21). When injected, polydimethylsiloxane distributes throughout the body, but this process is slow if the injection is to an area not accessible to phagocytizing cells (Ref. 33).

Acute animal toxicity tests have been conducted for octamethylcyclotetrasiloxane, hexamethyldisiloxane, dodecamethylpentasiloxane, and four polymeric methyl siloxanes. The oral LD_{50} for these compounds ranged from 40 g/kg to >60 g/kg (Refs. 11, 12, 15, 46, 57, 58, 63, 67, 68, 69, 71, and 72). The dermal LD_{50} was >16 mL/kg and 4.6 g/kg for hexamethyldisiloxane and octamethylcyclotetrasiloxane, respectively (Refs. 63, 67, 68, 69, and 71). Following inhalation exposure to near saturated atmospheres, death occurred in 1–15 minutes (≈4,000 ppm) and 8 hours (≈1,300 ppm), for hexamethyldisiloxane and octamethylcyclotetrasiloxane, respectively (Refs. 57, 63, 69, and 71). For hexamethyldisiloxane and polydimethylsiloxane, only irritation at the injection site was observed following subcutaneous administration (Refs. 8 and 57). No effects were observed following intraperitoneal injection of 10 mL/kg of dodecamethylpentasiloxane or polydimethylsiloxane, but some deaths occurred at > 0.3 mL/kg of hexamethyldisiloxane (Refs. 32 and 57). All of these compounds either produced no irritation or slight irritation to the skin and eyes (Refs. 57, 63, 67, 15, 17, and 18).

Repeat exposure studies in rats and rabbits of hexamethyldisiloxane produced no effects following dermal (20 exposures, dose not reported) or inhalation (20 exposures to 4,400 ppm) exposure. Dermal exposure for 21 days to 40 mg/kg/day of trifluoropropylmethylcyclotrisiloxane produced no effects, but similar exposure to 200 mg/kg/day reduced weight gain, food consumption, serum alkaline phosphatase activity and increased activity of serum enzymes; 5/12 animals died from exposure to 400 mg/kg/day (Refs. 11, 12, 13, 14, 60, 67, 68, 69, and 70). Polydimethylsiloxane produced no effects following oraladministration (20 gavage doses of 20.0 g/kg) (Ref. 57). Octamethylcyclotetrasiloxane reduced body weight and increased liver weight following both oral (2 g/kg/day by gavage for 28 days) and inhalation (700 ppm for 6 hours/day for 90 days) exposures (Refs. 22 and 24). In a chronic study of polydimethylsiloxane in mice, increased mortality was observed in females but not in males exposed for 76 weeks to dietary doses of 1,250 mg/kg/day, while subcutaneous implant of polydimethylsiloxane for 2 years resulted in mesenchymal tumors, some of which were malignant (Refs. 8 and 45).

In a developmental toxicity study, an increase in postimplantation loss was observed in rats following subcutaneous administration of 200 mg/kg of polydimethylsiloxane on gestation days 6–16, but this effect was not observed in a second trial (Refs. 2 and 39). Additionally, no soft tissue or skeletal malformations were observed following oral (1,000 mg/kg/day, gestation days 6–15) or dermal (200 mg/kg, gestation days 6–15) administration to rats, or subcutaneous administration to rabbits (1,000 mg/kg, gestation days 6–18) (Ref. 39).

Gene mutation assays in bacteria and mitotic recombination tests in yeasts were negative for decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclotetrasiloxane, hexamethyldisiloxane and octamethyltrisiloxane. A weakly positive result was reported for octamethyltrisiloxane in the mouse lymphoma L5178Y forward mutation assay; negative results were reported for the other siloxanes, both with and without S9 activation (Refs. 36 and 49).

Sister chromatid exchange assays in mouse lymphoma cells were negative for decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclotetrasiloxane, and hexamethyldisiloxane. Chromosomal aberration assays in mouse lymphoma cells yielded negative results in the presence and absence of S9 activation for decamethylcyclopentasiloxane, but mixed positive results were reported for others, as follows: hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane-positive with S9, negative without S9; and hexamethyldisiloxane-negative with S9, positive without S9 (Ref. 36).

In *in vivo* tests, hexamethylcyclotrisiloxane and hexamethyldisiloxane produced no evidence of chromosomal aberrations in the rat bone marrow cytotogenicity assay (Ref. 36). Polydimethylsiloxane fluid did not produce evidence of chromosomal effects in the mouse dominant lethal assay (Ref. 39).

Dermal sensitization was not observed in mice following a challenge with polydimethylsiloxane (Ref. 51). Preliminary findings with subcutaneously-placed, siloxane-containing implants indicated a dose-related decrease in activity of natural killer cells after 180 days; a time course study is currently underway (Ref. 52).

F. *Ecological effects information.* The Committee is not recommending ecological effects testing at this time because it wants to review data developed under TSCA Section 4 for octamethylcyclotetrasiloxane and any ecological effects data that may be submitted under TSCA Section 8(d).

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2.4.b. *Chloroalkyl phosphates.*

I. Rationale for Recommendation

Four chloroalkyl phosphates are recommended for physical and chemical property, chemical fate, health effects and ecological effects screening tests (Table 4). The Committee recommends testing these four chloroalkyl phosphates because they are structurally similar to the five chloroalkyl phosphates recommended in the 23rd Report (53 FR 46262, November 16, 1988) and because there are insufficient data to reasonably determine or predict physical and chemical properties, persistence and health or ecolgical effects.

TABLE 4.—RECOMMENDED CHLOROALKYL PHOSPHATES

CAS No.	Chemical Name	Acronym
34621–99–3	1,2-Ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate	TCIEP
38051–10–4	2,2-Bis(chloromethyl)-1,3-propanediyl tetrakis(2- chloroethyl) phosphate	TCEBP
53461–82–8	Oxydi-2,1-ethanediyl tetrakis(2-chloroethyl) phosphate	TCEDP
76649–15–5	2-Chloro-1-methylethyl bis(2-chloropropyl) phosphate	DCPCEP

II. Summary of Recommended Tests

Four chloroalkyl phosphates (TCIEP, TCEBP, TCEDP and DCPCEP) are recommended for determination of melting point, water solubility, octanol-water partition coefficient, and vapor pressure data, hydrolysis and aerobic biodegradation rate. Also recommended are screening tests to develop acute health effects data (except for TCIEP) and fish, algae and aquatic and benthic invertebrates acute toxicity data (fish and aquatic invertebrate acute toxicity data are available for TCIEP).

III. Supporting Information

A. *Background.* In 1986, two chloroalkyl phosphates, tris(2-chloroethyl) phosphate (TCEP) and tetrakis(2-chloroethyl) ethylenediphosphate (TCEEP) were identified for priority testing consideration during the Committee's Sixth Scoring Exercise (52 FR 10409, April 1, 1987). On May 12, 1988, the Committee decided to expand this group to include other commercially-available chloroalkyl phosphates: tris(2-chloro-1-propyl) phosphate (TCPP), tris(2-chloroisopropyl) phosphate (TCIP), and tris(1,3-dichloroisopropyl) phosphate (TDCP). In its 23rd Report (53 FR 46262, November 16, 1988), the Committee recommended testing for TCEP, TCPP, TCIP, TDCP and TCEEP.

The Committee's computerized substructure-based chemical selection expert system (SuCSES) was developed in 1986 (Ref. 10). In 1988, some components of SuCSES had not been integrated into the system and did not permit the Committee to identify all commercially-available chloroalkyl phosphates. In 1992, with these integrated components, SuCSES was used to identify four additional chloroalkyl phosphates: TCIEP, TCEBP, TCEDP and DCPCEP.

B. *Physical and chemical properties.* No information was found on physical and chemical properties measured at ambient temperature.

C. *Exposure/information—production/use/disposal/exposure/release.* The chloroalkyl phosphates listed in Table 4 are commercially available and may be produced in substantial quantities. Actual production volumes are confidential business information. Chloroalkyl

phosphates are used as flame retardants in flexible and rigid polyurethane foams. These chloroalkyl phosphate-treated foams are used in furniture and bedding that are sold for household, business, and transportation uses.

There are no publicly-available exposure estimates, OSHA occupational exposure standards, publicly-available effluent monitoring data and Toxics Release Inventory data. Uncertainties related to exposure and release of chloroalkyl phosphates may be clarified after the Committee's review of the data obtained under TSCA Section 8(a) and 8(d) along with any other information submitted as a result of the generic request for voluntary use, exposure, release, and physical and chemical property data made in Chapter 1 of the 28th report (56 FR 41212, August 19, 1991).

D. *Chemical fate information.* No chemical fate information was found.

E. *Health effects information.* Except for data described below for TCIEP and TCEBP, no health effects information was found.

Five acute toxicity studies on TCIEP were reviewed. The oral LD50 for male rats was 1.58 g/kg (Ref. 3). No rabbits died when 2 g/kg TCIEP was applied to abraded and non-abraded skin for 24 hours (Ref. 4). Inhalation of 200 mg/liter for 1-hour resulted in death of 3 of 10 rats (Ref. 5). TCIEP was not a skin irritant; however, when 0.1 ml was instilled into the conjunctiva of rabbits eyes, it was irritating (Refs. 6 and 7). In comparison to the studies reviewed on the five chloroalkyl phosphates recommended in the ITC's 23rd Report: by the oral route, TCIEP was less toxic than TCIP and TDCP, and about the same as TCEP and TCEEP; by the inhalation route, TCIEP was more toxic than TCEP, TCPP, TCIP, and TCEEP.

In a 90-day rat dermal toxicity study, TCIEP increased liver weight at 500 mg/kg/day and hypertrophy of the liver and thyroid at 2500 mg/kg/day (Ref. 8). In a pilot developmental toxicity test, 800 mg/kg/day TCEBP increased postimplantation loss at maternally toxic doses (Ref. 9). In comparison to the TSCA 8(d) developmental toxicity studies on chloroalkyl phosphates recommended in the ITC's 23rd Report, TCEBP was less toxic than TCEP, TDCP or TCEEP.

The Committee is aware that Ames, micronucleus, skin sensitization and 90-day developmental toxicity tests were completed for TCIEP and has requested copies of these test reports from the test sponsor.

F. *Ecological effects information.* Except for TCIEP data, no ecological effects information was found.

For TCIEP, the 2-day LC50 for daphnids ranged from 4.1–5.3 mg/L and the 4-day LC_{50} for fathead minnows ranged from 3.0–3.3 mg/L (Refs. 1 and 2). In comparison to the studies reviewed on the chloroalkyl phosphates recommended in the ITC's 23rd Report, LC_{50} values for TCIEP were close to the fish LC50 of TDCP (1.4 mg/L), but less than the fish LC_{50} of TCPP (51 mg/L) or the fish LC_{50} of TCEP (250 mg/L).

References

(1) Eastman Kodak Company. Acute aquatic effects of Thermolin RJT on the daphnid, *Daphnia magna*. Rochester, NY (1987).

(2) Eastman Kodak Company. Acute aquatic effects of Thermolin RJT on the fathead minnow, *Pimaphales promelas*. Rochester, NY (1987).

(3) MB Research Laboratories, Inc. Report on Thermolin 102 oral LD50 in rats. Project No. MB 77-1540, Spinnerstown, PA (1977).

(4) MB Research Laboratories, Inc. Report on Thermolin 102 acute dermal toxicity in rabbits. Project No. MB 77-1540, Spinnerstown, PA (1977).

(5) MB Research Laboratories, Inc. Report on Thermolin 102 inhalation toxicity in rats. Project No. MB 77-1540, Spinnerstown, PA (1977).

(6) MB Research Laboratories, Inc. Report on Thermolin 102 primary dermal irritation in rabbits. Project No. MB 77-1540, Spinnerstown, PA (1977).

(7) MB Research Laboratories, Inc. Report on Thermolin 102 rabbit eye irritation. Project No. MB 77-1540, Spinnerstown, PA (1977).

(8) Toxicol Laboratories Limited. "Thermolin RJT 90-day dermal toxicity study in the rat." Report No. OLA/11/88, Ledbury, U.K. (1988).

(9) Monsanto Co. "Pilot teratology study in rats with cover sheets and letter dated 4/10/90." Document No. 88-900000115, Fiche No. OTS-0524046, Office of Pesticides and Toxic Substances, Washington, DC. (1990).

(10) Walker, J.D. "Chemical selection by the Interagency Testing Committee: use of computerized substructure searching to identify chemical groups for health effects, chemical fate and ecological effects testing." *The Science of the Total Environment*. 109/110: 691-700 (1991).

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July 9, 1992

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107 and 171

Hazardous Materials Transportation; Registration and Fee Assessment Program; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM-208, Amdt. Nos. 107-26 and 171-115]

RIN 2137-AB43

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is establishing a national registration program for certain persons engaged in the offering for transportation, and transportation, of certain hazardous materials in foreign, intrastate or interstate commerce. Those persons are required to annually file a registration statement with RSPA. All persons who are required to be registered are assessed an annual fee of $300, $250 of which is to fund a nationwide emergency response training and planning grant program for States and local governments and $50 of which is to offset the costs to DOT of processing each registration statement.

RSPA is imposing an initial deadline of August 31, 1992, for filing the registration statement and paying the registration and processing fees. After September 15, 1992, no person required to file a registration statement with RSPA may transport, or cause to be transported or shipped, any of the specified hazardous materials unless that person has on file a registration statement as prescribed by this final rule. This regulation is necessary to establish a national registration and fee collection system to fund a national emergency response training and planning grant program.

EFFECTIVE DATE: August 31, 1992. However, immediate compliance is authorized.

ADDRESSES: Copies of the "Hazardous Materials Transportation Uniform Safety Act of 1990" (HMTUSA), Public Law 101-615, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371, (202) 275-2091.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards, (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, which amended the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.* Revised 49 App. U.S.C. 1805, requires, in part, certain carriers and shippers engaged in the transportation of hazardous materials to register with the Secretary of Transportation. Because the Secretary's responsibility in this matter has been delegated to the Research and Special Programs Administration (RSPA), most references in this final rule are to RSPA.

RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 10, 1991 (Docket HM-208; Notice No. 91-4; 56 FR 51294) proposing to establish a nationwide registration program for certain shippers, carriers, and packaging manufacturers engaged in intrastate, interstate, or foreign commerce. The proposed registration and fee collection program included those persons under a statutory obligation to file a registration statement. These registration and fee requirements apply to all modes of transportation (i.e., highway, air, water, and rail), in intrastate, interstate and foreign commerce. They apply to the transportation of highway route-controlled quantities of radioactive materials, certain explosives, hazardous materials extremely toxic by inhalation, certain bulk shipments of hazardous materials (e.g., shipments involving cargo tank trucks or rail tank cars having a capacity equal to or greater than 13, 248 liters (3,500 gallons)), and shipments of 2170 kg (5,000 pounds) or more of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required.

In addition, RSPA proposed, under the discretionary authority in 49 App. U.S.C. 1805, to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of United Nations (UN) or Department of Transportation (DOT) specification or DOT exemption packages, except small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

RSPA proposed two major alternative fee schedules. One alternative provided for a graduated fee schedule under which all persons (except foreign entities) required to file a registration statement with RSPA would have the choice of deciding whether to pay a registration fee based either on the person's annual net income or on the number of activities which the person carries out and for which filing a registration statement is required. The second alternative provided a flat fee schedule under which each person subject to the registration program would pay the same fee. In addition to the registration fee, RSPA proposed a $50 processing fee to cover the Department's costs in processing the registration statements.

The filing of a registration statement and the payment of a registration fee was proposed to be an annual requirement. The registration year was proposed to begin June 1 of one year and end May 31 of the following year. RSPA proposed May 31, 1992, for the effective date of the required filing of the initial registration statement and the required payment of the associated registration fee.

RSPA proposed that a "lock box" system be used by registrants for the filing of registration statements and the payment and processing of fees. The "lock box" is a post office box that a bank uses to collect mail frequently and transmit funds immediately to the U.S. Treasury. As proposed, persons subject to the registration program would mail their registration statements and their payments in full to a specific post office box on or before May 31 of each year. RSPA outlined the lock box procedures and proposed that payment be in U.S. dollars and by certified check, cashier's check, money order, or VISA or MasterCard credit card for the amount of the registration fee and the cost to DOT of processing the registration statement.

Proposed recordkeeping requirements included a requirement that copies of the registration statement and the Certificate of Registration be maintained at a person's principal place of business. RSPA further proposed that a copy of the Certificate of Registration be maintained at all fixed sites where applicable activities occur and also carried on board all transport vehicles, trains, vessels and aircraft. In addition, RSPA proposed that foreign entities subject to the registration requirements be required to designate an agent who is a resident of the United States.

II. Discussion of Comments

In addition to public hearings held in Burlingame, California; Des Plaines, Illinois; and Washington, DC, RSPA received over 160 written comments to Docket HM-208. Those submitting

comments represented a broad spectrum of interests in hazardous materials transportation.

RSPA received comments from small shippers, intermediaries such as warehousemen and freight forwarders, large chemical corporations, and trade associations representing the interests of the chemical manufacturers. Carriers in all modes provided comments and also were represented by rail, trucking, air, and ocean carrier associations. The packaging industry provided comments through individual companies and their associations.

United States agencies and foreign governments submitted comments on the proposed registration program. Because of the proposed rule's potential impact on foreign entities, there was considerable interest expressed by international air and vessel carriers, container lessors, corporations having foreign operations, and U.S. companies concerned with trade agreements.

Several State agencies and the National Governors' Association submitted comments addressing various issues. Small business entities responding to the proposed registration program included farmers and farm cooperatives, cleaning product suppliers, propane gas suppliers, petroleum marketers, contract haulers, and fireworks distributors.

Regulatory Review Comments

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 (57 FR 4744) soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA has received several comments to the proposed registration rule. These comments reiterated earlier comments to Docket HM-208 and addressed the applicability of the proposed registration requirements to packaging manufacturers and foreign entities, the separate registration of subsidiaries, the proposed requirement for maintaining proof of registration, and the amount of the annual fee.

All comments have been considered in preparing this final rule. Based on the merit of comments to the Notice and those received during the regulatory review, RSPA is modifying several requirements proposed in the Notice. Significant changes in this rule from the proposal published October 10, 1991, are discussed in detail below.

III. Scope and Exceptions—Sections 107.601–107.606

Section 107.601 defines the scope of the registration and fee collection regulations with respect to certain domestic and international shippers and carriers of hazardous materials in foreign, intrastate and interstate commerce. In response to comments, several clarifications have been made to this section. In addition, the proposal in the Notice to include certain package manufacturers in the registration program is not adopted in this final rule.

RSPA received numerous comments concerning the proposed scope of the registration program; these comments generally fall into two categories: (A) Recommendations to expand the scope of the registration program beyond that proposed in the Notice, or to limit the program to those persons required by statute to be registered; and (B) requests for clarification on whether certain persons, functions and activities associated with the transportation of hazardous materials are subject to the registration requirement.

A. Scope of the Registration Program

Under 49 App. U.S.C. 1805, RSPA has discretionary authority to expand the registration program to include a broad spectrum of persons and activities involved in the transportation of hazardous materials; such persons and activities are in addition to those persons and activities which, under the HMTA, must be covered by the registration program. Under this authority, RSPA proposed to expand the scope of the registration program to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of UN or DOT specification or DOT exemption packages, except for small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

A number of commenters suggested that RSPA further expand the scope of the registration program to include: (1) Persons who offer or transport hazardous waste in any quantity; (2) persons who offer or transport Division 1.1 or 1.2 explosives in quantities less than 25 kilograms (55 pounds); and (3) persons offering or transporting hazardous materials in any quantity requiring placards, and not just in quantities of 2,170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding is required. In addition, one commenter suggested that RSPA request Federal, State and local government agencies who offer or transport certain hazardous materials to register on a voluntary basis since, under the HMTA, these agencies are not required to be registered with RSPA.

Other commenters believed that the scope of the registration program should be expanded to include agents, property brokers, non-vessel operating common carriers (NVOCCs), consolidators, freight forwarders, warehousemen and other intermediaries involved in the transportation of hazardous materials, regardless of whether or not these entities are currently subject to the Hazardous Materials Regulations (HMR). These commenters maintained that all entities associated with, and benefiting from, the movement of hazardous materials should contribute toward emergency response training and planning. However, many commenters, including associations representing warehousemen, NVOCCs, brokers, freight forwarders, container lessors, and the intermodal tank container industry, were opposed to expanding the scope of the registration program beyond the minimum required by the HMTA. For example, the American Warehousemen's Association stated that Congress did not intend that the registration program apply across-the-board to every person involved in the transportation process.

In deciding whether to expand the scope of the registration program beyond the mandatory provisions of the HMTA, RSPA has evaluated and sought to balance a wide range of considerations. First, there is the fact that all persons involved in the transportation of hazardous materials—including storage incidental to transportation—have an important role to play in the safe transportation of these materials. The actions of each person involved in the transportation of hazardous materials can contribute to increasing or decreasing the risk associated with the distribution of these materials throughout the United States, thus affecting the workload and planning and training requirements of State and local emergency response personnel.

Twenty-eight percent of all hazardous materials incidents reported to RSPA between 1986 and 1990, and as published in RSPA's 1990 annual report to Congress on the transportation of hazardous materials, were attributable to package failures; these incidents certainly have contributed to the workload of emergency response personnel. The design, production and quality control processes used in the manufacturing of packages for the transportation of hazardous materials can affect the risk associated with these materials, in terms of fatigue and stress problems induced by the transportation

environment, or in terms of defective fittings, valves, or closures.

Package manufacturers, however, are only one component of a very large universe of shippers, carriers and other persons involved in the transportation of hazardous materials. This universe can vary significantly from year to year and includes physicians working in hospitals or operating out of private offices; technicians in clinics and laboratories; dry cleaners; gasoline station operators; photo developers; new and used car dealers; wholesale and retail distributors of paints, alcoholic beverages, and garden products; and a host of other persons and activities. Although individually each may not contribute significantly to the risk associated with the transportation of hazardous materials, in the aggregate they can account for a substantial portion of the total risk and workload faced by State and local emergency response personnel.

Given the diverse nature of the persons involved in the transportation of hazardous materials, RSPA has concluded that it is both reasonable and prudent that the registration program begin by focusing solely on those persons and activities subject to the mandatory registration requirements of the HMTA. This will ensure that the initial registration procedures and fee collection process operate in an orderly and efficient manner. To expand the registration program at this time either on a selective or on a more comprehensive basis could create unnecessary confusion and result in needless burdens on domestic commerce.

Further, as pointed out in the Notice, RSPA does not have an accurate picture of the universe of persons subject to the HMR nor the number of persons subject to the mandatory filing of registration statements. This uncertainty supports the decision that the initial steps of the registration program should be as simple and as streamlined as possible, provided that the basic purposes and integrity of the registration program are not undermined.

Also, limiting the registration program to those persons who are under a statutory obligation to register will enable RSPA and State and local compliance and enforcement personnel to carefully focus and concentrate their efforts, and gain additional experience with the registration process. However, RSPA may propose expanding the scope of the registration program in the future.

B. Persons Under Statutory Obligation to Register: Requests for Clarification

1. RSPA's Authority to Grant Exceptions

In responding to the question posed in the Notice on the possible broadening or narrowing of the registration program, several commenters mistakenly assumed that RSPA has the authority to except certain classes of persons explicitly covered by 49 App. U.S.C. 1802 and 1805 from the requirement to be registered with RSPA. RSPA has no such authority.

Thus, under 49 App. U.S.C. 1805, each person who carries out one or more of the following activities must file a registration statement with RSPA:

(1) Transports or causes to be transported or shipped in commerce highway-route controlled quantities of radioactive materials;

(2) Transports or causes to be transported or shipped in commerce more than 25 kilograms (55 pounds) of Division 1.1, 1.2, or 1.3 (Class A or Class B explosives) materials in a motor vehicle, rail car, or transport container;

(3) Transports or causes to be transported or shipped in commerce more than one liter (1.06 quarts) per package of a hazardous material which has been designated by RSPA as extremely toxic by inhalation;

(4) Transports or causes to be transported or shipped in commerce a hazardous material in a bulk package, container, or tank if the package, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(5) Transports or causes to be transported or shipped in commerce a shipment of 2170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required.

Under 49 App. U.S.C. 1802, the term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise. This definition appears in § 171.8 of the HMR.

However, 49 App. U.S.C. 1805 exempts from the registration requirement agencies of the Federal Government, agencies of States, agencies of political subdivisions of States, employees of such agencies with respect to their official duties, and employees of a "hazmat employer."

2. Applicability of Registration Requirements to Intrastate Offerors and Carriers

A number of commenters questioned whether intrastate offerors and carriers are subject to the mandatory registration requirements of the HMTA. The registration and other provisions of the HMTA make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. State and local emergency personnel, in responding to incidents involving the transportation of hazardous materials, do not and cannot make distinctions between intrastate and interstate offerors and carriers; and the HMTA neither requires nor, in RSPA's view, permits such an illogical and counterproductive result. Such a result would seriously vitiate the purposes of both the registration and the emergency response planning and training grant programs. This final rule requires that intrastate offerors and carriers be registered with RSPA in the same manner and to the same extent as foreign and interstate offerors and carriers of hazardous materials.

3. Applicability of Registration Requirements to Federal Contractors

Commenters representing air carriers requested an exception from the registration requirements for certain air carriers operating under Civil Reserve Air Fleet or Military Airlift Command charter programs on the grounds that these programs may obligate such carriers to engage in activities subject to the registration program. The Air Transport Association of America stated that such carriers should be excepted from the registration requirement because they are under a highly-structured government contract, subject to ongoing safety fitness reviews, and have no discretion as to the types of cargoes they transport. The U.S. Department of Energy, in discussing the applicability of the registration requirement to government contractors, was uncertain whether such carriers are exempt from the registration requirement.

RSPA's lack of authority to grant exceptions to the mandatory registration

requirements is particularly clear in the case of Federal contractors who offer or transport hazardous materials. In part, 49 App. U.S.C. 1818 states that:

> Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material * * * shall be subject to and comply with all provisions of this title, all orders and regulations issued under this title, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by this title or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

4. Applicability of Registration Requirements to Foreign Offerors, Carriers, and Governments

Foreign air carriers expressed the belief that they should be excepted from the registration requirement for a wide variety of reasons: The need for international reciprocity and cooperation; the potential imposition by foreign entities of similar or more stringent requirements on U.S. carriers and offerors; and the existence of various international agreements which purportedly take precedence over U.S. statutory law. The British Government stressed the issue of equity, and stated that just as U.S. government agencies are excepted from the registration program, foreign governments and agencies also should be excepted, especially for the transportation of defense materials. In a similar vein, another commenter maintained that Congress could not possibly have intended that the emergency response training and planning grant program for State and local governments be funded, at least in part, by foreign governments through the registration program, but not the U.S. Government itself.

With respect to foreign offerors, carriers and governments, it is noted that 49 App. U.S.C. 1802 defines these entities as "persons" and thus subject to the registration program to the extent they engage in any of the activities covered by the registration program. However, because of the extraordinary complexity of international commercial relations and significant problems associated with informing and identifying the parties concerned, RSPA is providing a two-year delay of application to foreign offerors, including foreign governments which offer hazardous materials for transportation.

For purposes of this delay of application, offerors which are foreign subsidiaries of U.S. corporations will be considered foreign offerors, except as noted below (see discussion below). The delay of application does not apply to foreign carriers. Foreign carriers operating in the United States are more familiar with U.S. requirements than foreign offerors. These carriers also come under the immediate surveillance of U.S. inspection and enforcement personnel. Therefore, foreign carriers operating in the United States are not excepted from registration requirements under the two-year delay. This means, for example, that any Canadian or Mexican motor or rail carrier, foreign airline carrier, or merchant vessel carrier transporting any of the specified hazardous materials in or on U.S. territory, airspace or territorial sea is subject to the registration program and must register with RSPA before entering the United States with any of those hazardous materials.

Application of these requirements to foreign carriers entering the United States is consistent with international law and international agreements to which the United States is a party. The registration fee is being used to support emergency response to hazardous materials incidents, response which will benefit foreign, as well as interstate and intrastate, offerors and carriers of hazardous materials into and in the United States by all modes of transportation. Moreover, the fee itself does not exceed the cost of supporting the response programs, including RSPA's costs of processing registrations, and is assessed fairly among the parties creating risks.

5. Applicability of Registration Requirements to Parent Companies and Their Subsidiaries

RSPA received a variety of comments on its proposal that each independently incorporated subsidiary must register and pay a fee separate from its parent company. As indicated in the Notice, RSPA proposed this regulatory approach because corporations are explicitly defined as "persons" under 49 App. U.S.C. 1802. Comments to Docket HM-208 provide no basis for excepting incorporated subsidiaries of a parent from the mandatory registration requirements under the HMTA. Therefore, each separate corporate entity under a parent company that engages in any of the activities subject to the registration program, and the parent company itself if it engages in any such activity, must be separately registered and pay the full registration and processing fee. For example, if a shipping company has a subsidiary trucking company and both are engaged in an activity subject to the registration program, each company must file a separate registration statement and each must pay a registration fee of $300 (including a processing fee of $50).

A number of commenters expressed concern that separate registration for corporate entities might be inappropriately applied to federated farmer cooperatives, because both local and regional cooperatives are separately incorporated. However, whether each local farm cooperative would be subject to separate registration depends on whether the cooperative is a separate person under applicable State law. Commenters also suggested that a parent company should be allowed to file one consolidated registration statement listing its subsidiaries with appropriate information and enclosing one combined total fee. They claimed that having one integrated filing would promote compliance, reduce administrative burdens, ensure the accuracy of information, facilitate updating, and give RSPA one point of contact.

RSPA is willing and able to partially accommodate these requests. RSPA has developed a "registration statement", DOT Form F 5800.2 (see Attachment #1), that is designed to capture the minimum amount of information required by the HMTA; facilitate processing and entry of the information into a computerized database; and result in the rapid issuance of a Certificate of Registration. Registrants must use this form in order to be properly registered with RSPA. Furthermore, the information provided on the registration statement must be specific to each registrant. Although the HMTA requires that each person subject to the registration program file a registration statement, a parent company can submit separate registration statements on behalf of, and for, each of its subsidiaries subject to the registration program (and itself, if also subject to the registration program) and enclose one combined registration fee payment. Registrants are advised that if there are discrepancies in the information provided on the registration statement (e.g. failure to sign each separate registration statement), or in the amount of the fee to be paid, the issuance of the certificates of registration for some, and possibly for all, of the companies on behalf of which the parent company has submitted the registration statements inevitably will be delayed.

6. Applicability of Registration Requirements to Owner-Operators of Motor Vehicles

RSPA received several comments on the issue of requiring separate registration from owner-operators under permanent or long-term lease to motor carriers. These commenters requested that RSPA exempt owner-operators under permanent or long-term lease arrangements to registered motor carriers. For example, the Chemical Waste Transportation Institute stated that owner-operators under long-term leases are virtually indistinguishable from employee drivers and should not be required to file separately. On the other hand, some commenters believed RSPA must require the separate registration for owner-operators acting as motor carriers under their own operating authority. The American Trucking Associations and the Independent Truckers and Drivers Association supported this view. They stated that an owner-operator acting solely as a separate motor carrier and maintaining separate liability insurance should be required to file a separate registration.

RSPA has considered these comments in light of 49 App. U.S.C. 1802 and 1805, and finds that there is a statutory basis for distinguishing between owner-operators operating under term lease arrangements, and owner-operators acting under their own operating authority. First, 49 App. U.S.C. 1805(c)(14) states that notwithstanding any other provisions of this subsection, an employee of a hazmat employer is not required to file a registration statement by or under this section. Also, 49 App. U.S.C. 1802, the term "hazmat employee" means "an individual who is employed by a hazmat employer and who in the course of the individual's employment directly affects hazardous materials transportation safety as determined by the Secretary by regulation. Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials."

Whether or not owner-operators are under a 30-day or longer lease (in the same manner as prescribed by the Interstate Commerce Commission in 49 CFR 1057.11 and 1057.12 or an equivalent contractual relationship) is a reasonable basis for distinguishing between owner-operators who are in fact "hazmat employees" and owner-operators who are operating as independent companies. Accordingly, owner-operators of motor vehicles having a 30-day or longer lease arrangement are excepted from the requirement to register with RSPA.

7. Applicability of Registration Requirements to Certain Shipments of Hazardous Materials

Many commenters asked RSPA to clarify paragraphs (a)(4) and (a)(5) of proposed § 107.601. First, the Fertilizer Institute (TFI) claimed that Congress did not intend to impose registration and fee requirements on farmers and small businesses involved in offering or transporting small cargo tanks with a capacity of less than 3,500 gallons and that this intent is negated by the 5,000-pound placarded quantity registration requirement of paragraph (a)(5). Further, TFI maintained that this apparent contradiction will have a major economic impact on the farming industry because, for example, a cargo tank carrying 1,000 gallons of liquid fertilizer would weigh 8,300 pounds, and thus be subject to the registration requirements. In addition, these commenters point out that several Congressmen have indicated their intent to introduce legislation which would except farming and other operations from the mandatory registration requirements of the HMTA.

Again, the language of the HMTA is clear and explicit: a person need only engage "in one" of the activities explicitly mentioned under 49 App. U.S.C. 1805 in order to be subject to the mandatory registration requirements. "Transporting or causing to be transported or shipped in commerce a shipment of 5,000 pounds [2,170 kilograms] or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required" is one of the activities described in the HMTA.

Second, one commenter stated that clarification between the apparent overlap in proposed paragraphs (a)(4) and (a)(5) could be achieved by inserting the phrase "placarded shipments" into paragraph (a)(5). Without such clarification, the commenter claimed, RSPA would be double-charging for a single activity, which is unfair and contrary to Congressional intent. Another commenter stated that RSPA should clarify the placarded quantity provision of paragraph (a)(5) and believed that it should apply to dry freight only. As another alternative, the State of Maryland Department of Environment recommended that RSPA add "in non-bulk packaging" in § 107.601(a)(5) after "or hazardous materials."

In addition, statements on the floor of both the House of Representatives (Cong. Rec., January 3, 1992) and the Senate (Cong. Rec., January 21, 1992) have raised questions about Congressional intent in enacting 49 App. U.S.C. 1805 and indicated that this provision might be amended. Furthermore, on May 8, 1992, the Secretary of Transportation formally proposed amendment of 49 App. U.S.C. 1805(c)(1)(C) to avoid requiring registration of farmers transporting ammonia in nurse tanks as if they were commercial transporters of hazardous materials.

It is likely, therefore, that confusion about applicability of this rule exists among farmers and other transporters of hazardous materials weighing more than 2,170 kg (5,000 pounds) in a bulk packaging, container or tank with a capacity less than 13,248 liters (3,500 gallons). To alleviate this problem, RSPA is delaying application of this rule to those persons until July 1, 1993.

The option of charging a higher registration fee for persons who engage in more than one activity subject to the registration program is within the discretionary authority of RSPA, as pointed out in the Notice (see also 49 App. U.S.C. 1815). However, this is no longer an issued because RSPA is imposing the same fee on all registrants, regardless of their number of covered activities.

Third, a number of commenters believed RSPA should define the term "shipment", in paragraph (a)(5). One commenter maintained that the term "shipment" should mean a single package or container or single tank, and expressed concern that the absence of a definition for "shipment" would require registration by a carrier transporting a number of packages of different types in a single aircraft container. Another commenter stated that a shipper might elect to offer two or more shipments, described on separate waybills and hazardous materials shipping papers, together amounting to more than 5,000 pounds. This commenter also asked whether a carrier accepting such separately documented packages from a single shipper or forwarder for transportation would be subject to the registration requirements.

The term "shipment" is used in a wide variety of ways by persons in commerce and industry and by regulators and enforcement agencies. Rather than attempting to define the term in a meaningful way for purposes of § 107.601, RSPA is providing a qualification of the "5000 pound proviso" that limits it to hazardous materials being loaded at one loading facility. This is consistent with the applicability of § 172.504(b) in regard to

placarding, which was the basis for the limitation specified in Section 8 of HMTUSA. This qualification, contrary to the view discussed above, is necessary because the meaning of the term "shipment" is not explicit and it would be unnecessarily burdensome on carriers to require them to calculate aggregations of offerings (small shipments) during pickup and delivery operations. In addition, it is likely that most "less than truckload" carriers would be subject to the registration requirement due to the probability that at one time or another during the registration year they will handle a one class offering of 5000 pounds or more that is loaded at one facility.

In the context of paragraph (a)(5), a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is 5,000 or more pounds, is engaged in the "shipment" of materials. If these materials are in a hazard class for which placarding of a vehicle, rail car or freight container is required, both the offeror of the material and the carrier accepting the material for transportation are subject to the registration program. Again, in the context of paragraph (a)(5), if a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is less than 5,000 pounds, even if these materials involve a class of hazardous material for which placarding of a vehicle, rail car or freight container is required, neither the offeror of the material nor the carrier accepting the material meets the criteria of paragraph (a)(5) with respect to the requirement to be registered with RSPA. The nature of the materials, however, may require registration under other paragraphs in § 107.601.

In this final rule, paragraph (a)(5) is redesignated paragraph (e) and revised to clarify that the weight of the shipment refers to "gross weight". RSPA also has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2170 kg (5000 pounds) or more of a class of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice.

8. Applicability of Registration Requirements to Persons Who Offer (or Cause to be Transported) or Transport in Commerce Hazardous Materials.

Many commenters asked RSPA to more clearly define the terms "cause to be transported or shipped" or "offer," noting that definitions for these terms appear neither in the HMTA nor in the Notice. One commenter recommended that RSPA define "shipper" and "carrier," with the definition of "shipper" to include wholly-owned private carriers. Another commenter sought guidance as to who the "shipper" is in transactions where more than one party is involved at the shipment's origin. This commenter also added that it is unclear whether a firm who is the shipper of record or a firm actually tendering the shipment is the person who is the offeror. Other commenters requested clarification of who must register and pay fees in situations where consignees return off/specification, residue, or recovered material on a one/time basis to the original shipper.

Members of the Intermodal Tank Container Association (ITCA) claimed to be uncertain and confused as to whether or not they would have a legal obligation to comply with the registration requirements. ITCA declared that intermediaries such as freight forwarders, brokers, and NVOCCs should not be left to determine "at their peril" whether or not to register and pay. Because the proposed regulations do not refer to persons acting in capacities other than as offerors or transporters, ITCA stressed the importance of clearly identifying those persons required to register. On February 26, 1990, RSPA published a formal interpretation of what constitutes an "offeror" or "shipper" of hazardous materials under the HMR [Int. No. 88–1–RSPA; 55 FR 6761]. In this interpretation, RSPA stated that determining regulatory responsibilities involves a case/by/case determination based on all relevant facts. No single factor, RSPA said, conclusively determines legal responsibility of performance of "offeror" functions under the HMR. The interpretation, among other things, stated:

> The word "shipper" is not specifically defined in the HMR (49 CFR parts 171–180), due primarily to the fact that it is not possible for the Department to account for the numerous commercial arrangements that may exist under that concept. Although the word "shipper" does appear, it is used in an ordinary layman's manner rather than as a specific, technical term of art. Consequently, responsibilities generally are placed on "offerors" for performance of the functions associated with "offering" hazardous materials for transportation (e.g., see the general and applicability provisions in §§ 171.1, 171.2, 172.3, and 173.1).
>
> The key issue in determining the regulatory responsibilities under the requirements of parts 171, 172, and 173 is determining which parties perform which functions. This involves a case-by-case determination based upon all relevant facts. Any person who performs, attempts to perform, or under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performance of those functions. Any person's performance or attempted performance of any "offeror" functions may be evidence of that person's responsibility for performance of other "offeror" functions. In many cases, more than one person may be responsible for performing, or attempting to perform, "offeror" functions, and each such person may be held jointly and severally accountable for all or some of the "offeror" responsibilities under the HMR.

More precise definitions of the terms "causes to be transported or shipped," and "offeror" would not be helpful in this context. However, it is clear that if in transportation an "intermediary" or "facilitator"—such as a freight forwarder, broker, warehouseman, consolidator, or non-vessel operating common carrier—performs any of the functions of an offeror as to any covered hazardous material, this intermediary is subject to the registration program.

Further, while commenters assume that there is only one offeror in any given situation, in actuality there may be one or more offerors, jointly and severally responsible for compliance with the HMR, in any transportation transaction—depending on the nature of the transaction. Each such offeror is subject to the registration program.

In addition, if a consignee returns off-specification, residue, or recovered material on a one-time basis to the original shipper, the consignee is an offeror of hazardous materials; thus, if the materials involved are covered by the registration requirements, the consignee must register with RSPA.

In summary, if a person performs any function of an offeror or carrier of hazardous materials, and if the materials or activities involved are subject to the registration requirements, that person must register with RSPA. This is consistent with the present scope of the HMR—except that the registration requirements also apply to *all* intrastate offerors and carriers of hazardous materials by highway (as well as all other modes) because of the HMTA statutory mandate.

9. Preemption of State and Local Registration Programs And Use of Funds

The National Governors' Association and other commenters urged RSPA to specifically state in the final rule that the Federal registration and fee program does not preempt or restrict a State's ability to register or permit motor carriers. Several commenters were concerned about the purpose and the use of the funds collected as registration fees.

This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials.

RSPA encourages States, as well as local governments and Indian tribes, to incorporate by reference, or otherwise adopt and enforce, the HMR as State, local or Indian tribal law. This approach greatly enhances compliance with a nationally uniform set of regulations concerning the transportation of hazardous materials.

The monies generated by this registration program will be used to fund a public sector grant program that is being established to increase the effectiveness of State and local hazardous materials emergency training and planning programs, as required by 49 App. U.S.C. 1815. This section authorizes DOT to provide assistance to States for emergency response planning and to States and Indian tribes for emergency response training. The program is to begin in fiscal year 1993 and extend through fiscal year 1998. Thus, the grant monies that will be distributed as a result of this registration program will be used to fund some of the hazardous materials transportation enforcement, compliance, planning, training, emergency response and cleanup programs of States, Indian tribes, and local governments. For a thorough discussion of the grant program, interested readers should refer to RSPA's proposed grants rule, which was published in the **Federal Register** on March 2, 1992, under Docket HM-209 (57 FR 7474).

The existence of this registration program and the related grants program is not to be construed as having any preemptive effect. Of course, State, local or Indian tribe requirements may be preempted by the Commerce Clause of the Constitution or by statutory provisions of the HMTA or other Federal laws. For example, 49 App. U.S.C. 1811 prohibits imposition of hazardous materials transportation fees which are not equitable or which are not used for purposes related to the transportation of hazardous materials. This provision was added to the HMTA by Congress in the HMTUSA—the same law which mandated the registration and grants program. It clearly demonstrates a legislative intent to authorize hazardous materials transportation fees so long as those fees meet the criteria of that section. Likewise, 49 App. U.S.C. 1819 addresses the uniformity of State motor carrier registration forms and procedures. However, neither the HMTA registration provisions being implemented by this regulation nor this regulation itself provides any basis for preemption of State, local government or Indian tribal requirements relating to hazardous materials transportation.

10. Motor Carrier Permitting Requirement

Several commenters recommended that RSPA clarify the relationship between registration and motor carrier permitting and emphasize that RSPA's registration rule does not preempt or restrict a State's ability to register or permit motor carriers. The major purposes of this registration program are threefold: (1) To identify and provide information on the activities and locations of certain persons engaged in the transportation of hazardous materials; (2) to encourage compliance with the HMR; and (3) to provide a mechanism for funding certain hazardous materials safety activities. The program is not intended to deny a person the right to engage in any of the activities covered by the registration program. On the other hand, a permitting or licensing program is primarily intended to establish criteria which certain offerors and carriers of hazardous materials must meet in order to operate. As discussed previously, the registration program has no preemptive effect on a State's ability to develop or implement a hazardous materials registration program. The potential burdens and problems of duplicative or inconsistent State and local registration programs are being addressed by a working group created under 49 App. U.S.C. 1819.

As discussed in the Notice, the HMTA requires motor carriers to obtain a safety permit if they carry certain hazardous materials. Carriage of these materials also may make them subject to registration requirements, which apply to all modes of transportation. In addition, carriers must comply with all applicable Federal motor carrier safety regulations and minimum Federal financial responsibility laws. The preemptive effect of the requirement for motor carriers transporting hazardous materials to obtain a safety permit from DOT under 49 App. U.S.C. 1805(d), has not yet been determined.

IV. General Registration Procedures—Section 107.608

A. Registration Statement

The HMTA specifically requires the submission of a registration statement from persons required to register, and also requires that the statement include, at a minimum, the registrant's name and principal place of business, a description of each activity the registrant carries out for which filing of a registration statement is required, and the State or States in which the registrant carries out each such activity. RSPA has decided to collect additional information only as necessary for administrative purposes (e.g., certain existing identification numbers, and information relating to fee payment).

Several commenters urged RSPA to allow persons subject to the registration program an adequate period of time (to gather information, and prepare and file their registration statements) between the publication of the final rule and the beginning of the registration year. For the first year, RSPA is setting August 31, 1992, as the initial registration deadline, and September 15, 1992, as the date after which no person required to register may offer or transport hazardous materials unless such person has a current Certificate of Registration. In subsequent years, the registration year will begin on July 1 and end June 30 of the following year. Any person who at any time during the registration year engages in one or more of the activities subject to the registration program must file a registration statement with RSPA and pay the registration fee before engaging in any of those activities. Persons who expect to engage in any of the activities subject to the registration requirement are encouraged to register as soon as possible, since the time involved in obtaining a certificate validating the registration statement possibly could entail more than several days. RSPA realizes that many of the activities subject to the registration requirement may be conducted on an infrequent basis throughout the year, or involve delivery schedules that may have been contracted for months in advance. However, under this regulation, persons who violate the registration requirement after September 15, 1992, will be subject to civil and criminal penalties, and their shipments could be frustrated or temporarily delayed. Similarly, persons who submit incomplete or inaccurate registration statements may be subject to civil and criminal penalties.

Many commenters claimed that the proposal to renew registration annually is an unnecessary burden and would generate substantial paperwork with no comparable benefit. They further stated that activities do not change significantly in a year, and registration renewal should be required less

frequently and only if a person changes activities.

RSPA is retaining the annual filing requirement. In addition, RSPA has not implemented the suggestion that registrants be allowed to file for multiple years and pay a correspondingly larger fee. As pointed out in the Notice, the registration statement cannot be filed or renewed less frequently than once every year without severely impairing the efficiency and effectiveness of the registration program, and the integrity of the information collected under this program. The HMTA requires that an annual registration fee be paid by all persons subject to the registration program. Further, in order to identify the registrant, a document accompanying a check or money order or supplying credit card information is absolutely necessary. In addition, the registration statement provides a means for a person to annually update the information on the States within which it is carrying out activities subject to the registration program.

RSPA acknowledges the point made by several commenters that a complete and accurate listing of States in which a registrant engaged in certain activities may be difficult, especially in the case of air and merchant vessel operators. However, the use of airspace and waterways for the transportation of hazardous materials creates an increased need for emergency planning and response, the development of which is a primary objective of the registration and fee collection program. Registrants transporting hazardous materials by air or merchant vessel should, at a minimum, indicate all States in which loading and unloading operations were conducted, and also should make a good faith effort to indicate those States whose airspace or waterways were traversed.

In response to comments and on its own initiative, RSPA has simplified and clarified the proposed registration statement to the following extent: (1) The categories "Importer" and "Freight Forwarder" have been removed from the Prior-Year Survey Information. (2) A State group category, "48 Contiguous States," has been added to the lists of States for the convenience of registrants having widespread operations (marking this group designation will indicate that the registrant actually engaged in the activity in all 48 contiguous States). To indicate that activity was also conducted in Alaska, American Samoa, the District of Columbia, Guam, Hawaii, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, the appropriate abbreviation(s) must also be circled. (3) The proposed category F (referring to the manufacturing, fabricating, or marking of a UN or DOT specification or DOT exemption packaging) has been removed. (4) The registrant's certification has been revised to indicate that the information is true, accurate, and complete to the best of the certifier's knowledge. (5) Some minor changes in the language of the statement have been made in order to provide clearer directions or to more accurately reflect the statutory or regulatory language. The registration statement is provided as Attachment #1 to this final rule. This form may be reproduced and used to register.

B. Availability of Registration Statements

Additional copies of the registration statement and a set of instructions to assist in completing the statement may be obtained by calling the Hazardous Materials Registration Program at 202–366–4109 or the Hazardous Materials Registration Support Center at 617–494–2545, or by writing to the Hazardous Materials Registration Program, DHM–60, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Although RSPA will make extensive efforts to distribute the registration statement, it is the responsibility of persons engaged in any of the activities requiring registration to obtain, complete, and submit the statement in a timely manner.

C. Use of Electronic Data Information Systems and Methods of Payment

Although RSPA intends to use a computer database to manage the information collected in the registration program, suggestions made by commenters that registrants be permitted to register through electronic transfer of the registration statement information or by electronic transfer of payment have not been adopted by RSPA at this time. Electronic transmittal of information and electronic transmittal of funds were considered by RSPA during the initial planning stages for internal program procedures. In order to keep the registration process as simple and consistent as possible, such methodologies have not been integrated into the management system. The use of electronic information submission and fund transfer may be reconsidered in the future.

D. Availability of Data to State and Local Governments

A number of commenters questioned whether the information collected from the registration statements would be made available to State and local governments. RSPA intends to make the date available to Federal, State and local government agencies in accordance with its general policy of sharing information with hazardous materials safety regulatory and enforcement personnel. As specified in 49 App. U.S.C. 1805, a registration statement will be made available for inspection by any person, for a fee to be established by the Secretary, except that any information protected by law from disclosure to the public may not be released. Inquiries about the availability of information may be directed to the Hazardous Materials Registration Support Center at 617–494–2545 or the Hazardous Materials Registration Program at 202–366–4109.

E. Proof of Submission and Amendments

Several commenters were concerned about the § 107.608(b) proposal that registrants must have on file a current annual registration statement before conducting any activity subject to registration requirements. One commenter recommended that RSPA reconsider this requirement, citing the potential difficulties faced by many U.S. air carriers on a "stand-by" arrangement with the Department of Defense to provide supplemental airlift in the event of a declared national emergency. Several commenters also objected to the proposed requirement that registrants furnish an amended registration statement and receive an amended Certificate of Registration in advance of engaging in any new activity subject to the registration program.

First § 107.608(b) is closely patterned on the statutory language of 49 App. U.S.C. 1805, which states that no person subject to the registration requirement may engage in any activity for which registration is required, unless that person has on file a registration statement.

Second, the expedited registration provisions address the concerns of those who, for whatever reason, may wish to be registered in an expedited manner. Applicants unable to register through the regular process will have the option of registering through an expedited process if they are willing to pay an additional $50 processing fee (see discussion below). Third, in § 107.608(c), RSPA has retained only one requirement concerning the need for registrants to amend their registration statements during the registration year. Because there is no longer a connection between the number of activities conducted and the amount of the registration fee, there

is no need to amend the statement when a new activity is conducted by a registrant. Registrants must file an amended registration statement only when there has been a change of name or principal place of business during the registration year.

F. Designation of Resident Agent by Foreign Entities

Several commenters suggested various alternative procedures on how foreign offerors and carriers could be registered and how best to enforce the registration requirements. However, RSPA is retaining the requirement as proposed in the Notice that a person who is not a resident of the United States and who is subject to the registration requirements must designate an agent for service of process who is a resident of the United States. The designated U.S. agent is required to file (or ensure filing of) the registration statement and pay (or ensure payment of) the fee for, and on behalf of, the non-U.S. resident. The agent also is required to maintain records required by this rule.

V. Fee Schedule—Section 107.612

This section has been greatly simplified. As revised, persons subject to the registration program must pay an annual registration fee of $300. This fee represents a combination of the minimum $250 fee required by the HMTA plus a processing fee of $50. All registrants, regardless of size, income, or hazardous materials activities, must pay the same registration fee.

After a careful analysis of the many diverse comments on this subject, RSPA has considered all appropriate factors and decided to charge an annual minimum flat fee for several reasons. It is the most simple and straightforward fee schedule possible. It will be easily understood by the regulated parties. It is easily administered and enforceable. It minimizes paperwork burdens on industry and the government and any unintended competitive impacts or undesirable market entry constraints on domestic and international commerce. And, because it is the minimum registration fee possible under the HMTA, it provides the maximum relief possible for small businesses. Under these circumstances, a registration fee of $300 (including a $50 processing fee) strikes a practical balance between equity considerations and the virtue of regulatory simplicity.

The collection of a processing fee is authorized under the HMTA in order to cover the costs of the Department of Transportation in processing the registration statements. This authority is distinct from that relating to the collection of fees to fund the Public Sector Training and Planning Programs. Although several commenters thought that the proposed processing fee of $50 was excessive, other commenters considered the proposed fee reasonable, at least for the start-up year. RSPA had determined that a $50 processing fee collected from the estimated minimum number of registrants is necessary to ensure that sufficient funds are collected to cover the costs of processing the registration statements. The amount of this fee may be adjusted in succeeding years based on the number of registrants.

VI. Payment Procedures and Expedited Registration—Section 107.616

In response to several comments, and in recognition that there may be special circumstances in which a person will need to register within a short period of time, RSPA is adopting an expedited method for registration and fee payment that will immediately provide, for $300 plus an additional $50 fee, a temporary registration number via telephone, if the registrant furnishes credit card information, name, and address. RSPA will assign the registrant a Temporary Registration Number, which the registrant may immediately use to prove compliance with the registration requirement and which will remain effective for 45 days from the date of issuance. A letter containing the Temporary Registration Number, accompanied by a blank copy of the registration statement, will be sent by RSPA to the registrant to prove compliance and payment after the credit card payment is verified. The registrant must complete the registration statement within 30 days and submit it with a copy of the letter as proof of payment to RSPA. RSPA then will issue a regular Certificate of Registration with a new Registration Number. This service will be continuously available through the Hazardous Materials Registration Support Center at 800–942–6990 or 617–494–2545. The expedited registration process is being offered to accommodate registrants with a clear and immediate need to register, and is not intended to be the normal means of registration. RSPA may limit, or alter the procedures related to, the provision of this service. Registrants who opt to use this service should note that failure to comply with the instructions issued relating to expedited registration will result in a significant delay in processing the request.

VII. Recordkeeping Requirements—Section 107.620

A. Issuance of a Certificate of Registration

Although several commenters opposed issuance of a Certificate of Registration, RSPA maintains that the issuance of such a document as a means of confirming registration and of notifying the registration and of notifying the registrant of the assigned Registration Number serves a useful and necessary function. A Certificate will not be issued until all registration requirements have been met, including the submission of a completed registration statement and payment of the required fees in full. As noted elsewhere, failure to comply with any requirement or instruction relating to the registration process will result in delays in the issuance of a Certificate. RSPA will endeavor to provide a Certificate within a reasonable time after receipt of a registration statement and payment in full. Inquiries related to the receipt of a registration statement or the issuance of a Certificate of Registration should be directed to the Hazardous Materials Registration Support Center at 617–494–2545.

B. Maintaining Proof of Registration

Practical concerns were raised by commenters to RSPA's proposals that a copy of the registration certificate issued by RSPA be carried on board transport equipment and also be maintained at each fixed site where a registrant engages in activities subject to registration requirements. One commenter stated that these requirements are the most burdensome aspect of the registration proposal because they could create errors, waste enforcement resources, and generate volumes of paper. Another commenter stated that duplicate documentation on board transport equipment and at fixed sites was contrary to RSPA's goal of a simplified system. Other commenters suggested that RSPA should assign a unique registration number to each registrant which could be affixed to a truck in the form of a decal or entered on shipping papers. The National Transportation Safety Board (NTSB) stated that such a system could facilitate Federal, State and local government compliance and enforcement efforts, especially for persons having a history of noncompliance.

RSPA has revised § 107.620 to require that a copy of the registration certificate be maintained only at a registrant's principal place of business. In addition,

motor carriers subject to the registration requirements either: (1) Must carry a copy of their Certificate of Registration on board all transport vehicles used to transport hazardous materials subject to the registration program; or (2) must display the carrier's unique registration number on any document in the motor vehicle that can be made available, upon request, to enforcement personnel.

A few commenters interpreted the requirement for carriers to have a Certificate of Registration on board transport equipment to mean that an offeror must provide a carrier with a copy of the offeror's certificate of registration when offering a shipment within the scope of the registration requirements. This is not the case.

Another commenter thought that copies of checks, money orders, or credit card billings must be maintained at each location. This also is not the case; in fact, this requirement applies only to the principal place of business.

VIII. Summary

In this final rule, RSPA is imposing registration and fees on persons engaged in offering or transporting certain hazardous materials. RSPA is not adopting the proposed requirement to require registration of persons who manufacture, fabricate, mark, retest, or recondition UN or DOT specification or DOT exemption packaging. In addition, owner-operators of motor vehicles under a 30-day or longer lease to registered motor carriers are excepted from the registration requirements. Certain foreign carriers are required to register by the initial deadline of August 31, 1992, but a two-year delay of application is provided to foreign offerors, including foreign subsidiaries of domestic corporations and foreign governments performing an offeror function. Finally, RSPA is retaining the proposed requirement that each independently incorporated subsidiary must register and pay a fee separate from its parent company.

An August 31, 1992 filing deadline has been set for initial registration. In subsequent years, registrants will be required to submit their registration renewals and appropriate fees by June 30. Registrants are required to pay an annual fee of $300 (including a $50 processing fee). RSPA is adopting an expedited registration and fee payment system to provide an immediate, temporary registration. A registrant utilizing the expedited registration system will pay an additional fee of $50, for a total fee of $350.

The registration statement has been modified to provide registrants with an optional "48 Contiguous States" category, and the certification language appearing on the proposed registration statement has been rewritten to provide greater flexibility to the person signing the statement. The proposed requirement for registrants to maintain a copy of the certificate of registration at all fixed sites has been withdrawn. However, each registrant must maintain a copy of the certificate at its principal place of business. In addition, motor carriers must maintain a copy of the certificate on board each transport vehicle transporting hazardous material subject to registration requirements or annotate the registration number on a document readily available for inspection, upon request, by enforcement personnel.

The following is a section-by-section review of this final rule:

Part 107: Hazardous Materials Program Procedures

A new Subpart G, "Registration of Hazardous Materials Offerors and Carriers" is added to part 107.

Section 107.601 describes the applicability of the registration and fee collection regulations. The requirements apply to offerors and carriers whose hazardous materials transportation activities involve certain specific types or quantities of hazardous materials in foreign, intrastate or interstate commerce. Under 49 App. U.S.C. 1805, RSPA interprets "transport container" to mean "freight container". Therefore, when more than 25 kg of a Division 1.1, 1.2, or 1.3 material is transported in a freight container in any mode, it is subject to the registration requirements.

RSPA has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2,170 kg (5,000 pounds) or more *of a class* of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice. Also, application of paragraph (e) has been delayed until July 1, 1993, for shipments in a bulk packaging, container, or tank.

The proposed inclusion of persons who manufacture, fabricate, mark, retest or recondition a UN or DOT specification or DOT exemption packaging has not been adopted, but RSPA may reconsider this issue in the future.

Section 107.606 provides exceptions from the requirements. The registration and fee assessment requirements would not apply to Federal agencies, State agencies, political subdivisions of States, employees of those agencies, or hazmat employees (including owner-operators under a 30-day or longer lease to a registered motor carrier). In addition, in paragraph (f), foreign offerors, including foreign subsidiaries of U.S. corporations, would be excepted from all registration requirements until June 30, 1994.

Section 107.608 outlines general registration requirements. Paragraph (a) indicates the annual deadline for submitting registration statements. Paragraph (b) prohibits a person required to file a registration statement from engaging in any hazardous materials transportation activities for which a registration statement is required unless that person has complied with all applicable registration requirements. Paragraph (c) requires submission of an amendment if a change in the registrant's name or place of business occurs during the registration year. Paragraph (d) provides an address for obtaining copies of the registration statement form. Paragraph (e) requires foreign entities subject to the registration requirements to use a designated agent.

Section 107.612 adopts a flat fee of $300 (including a $50 processing fee) to be imposed on each person required to register.

Section 107.616 prescribes payment procedures. Paragraphs (a) through (c) outline the procedures to be followed when submitting the registration statement and payment. A new paragraph (d) is added to summarize the procedures for expedited registration.

Section 107.620 outlines recordkeeping requirements. The proposed requirement to maintain a copy of the certificate at all fixed sites is not adopted. The requirement to maintain a copy of the registration statement and the Certificate of Registration at a person's principal place of business has been retained in paragraph (a) and applies to all registrants. As provided in redesignated paragraph (b), motor carriers would also be required to maintain a copy of the Certificate of Registration on board transport vehicles or annotate their registration number on any document in the vehicle readily available to enforcement personnel. Redesignated paragraph (c) requires registrants to provide any relevant records and information requested by DOT.

Part 171: General Information, Regulations and Definitions

Section 171.2. Paragraphs (a) and (b) are revised to mandate compliance with Subpart G of Part 107, as proposed in the Notice.

IX. Regulatory Analyses

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

These regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(e) of the Procedures, RSPA has determined that a Regulatory Impact Analysis is not required because the regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA has prepared a Regulatory Evaluation which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The Regulatory Evaluation is available for review in the Dockets Unit.

B. Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Under 49 App. U.S.C. 1815, the amount of the annual fee which may be collected from a person required to register with RSPA may not be less than $250 and may not exceed $5,000. Because of the required minimum fee of $250, RSPA's ability to treat small entities differently is restricted. RSPA expects that the impact of a $300 fee (including a $50 processing fee) on small business entities will be minimal, and without significant economic consequences. The rule will have no direct impact on small units of government.

C. Executive Order 12612

The rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). As noted above, States and local governments are "persons" under the HMTA, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107 and 171 are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1804, 1806, 1808–1811; Public Law 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. Subpart G is added to part 107 to read as follows:

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

Sec.

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

§ 107.601 Applicability.

The registration and fee requirements of this subpart apply to any person who offers for transportation, or transport, in foreign, interstate or intrastate commerce—

(a) Any highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A) (see §§ 173.115 and 173.132 of this chapter);

(d) A hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 L (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(e) A shipment of 2,170 kg (5,000 pounds) gross weight or more of a class of a hazardous material(s) for which placarding of a vehicle, rail car, or freight container is required. Prior to July 1, 1993, this provision does not apply to a hazardous material in a bulk packaging, container, or tank. For applicability of this subpart, the term "shipment" is further limited to the hazardous material being loaded at one loading facility.

§ 107.606 Exceptions.

The following are excepted from the requirements of this subpart:

(a) An agency of the Federal Government;

(b) A State agency;

(c) An agency of a political subdivision of a State;

(d) An employee of any of those agencies in paragraphs (a), (b), and (c) of this section with respect to is or her official duties;

(e) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual relationship);

(f) Until July 1, 1994, a person domiciled outside the United States who offers, solely from locations outside the United States, hazardous materials for transportation in commerce. This exception includes a foreign subsidiary of a United States corporation.

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement not later than—

(1) August 31, 1992, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2; and

(2) June 30 for each subsequent registration year, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2.

(b) After September 15, 1992, no person required to file a registration statement may transport or cause to be transported or shipped hazardous materials, unless such person has on file, in accordance with § 107.620, a current annual Certificate of Registration in accordance with the requirements of this subpart.

(c) A registrant whose name or principal place of business has changed during the year of registration must notify RSPA of that change by submitting an amended registration statement not later than 30 days after the change.

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM-60, U.S. Department of Transportation, Washington, DC 20590-0001 or by calling 617-494-2545 or 202-366-4109.

(e) If the registrant is not a resident of the United States, the registrant must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with § 107.7, to serve as agent for service of process.

§ 107.612 Amount of fee.

Each person subject to the requirements of this subpart must pay an annual fee of $300 (which includes a $50 processing fee).

§ 107.616 Payment procedures.

(a) Except as provided in paragraph (d) of this section, each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 740188, Atlanta, Georgia 30374-0188. A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address.

(b) Payment must be made by certified check, cashier's check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the "Hazmat Registration Fee" or by a VISA or MasterCard credit card authorization completed and signed on the registration statement.

(c) Payment must correspond to the annual fee indicated in § 107.612.

(d) A person may obtain a temporary registration number, valid for 45 days from the date of issuance, through an expedited registration process as follows:

(1) Contact RSPA by telephone (800-942-6990 or 617-494-2545) and provide name, principal place of business, and credit card payment information;

(2) Pay a $350 registration and processing fee (including a $50 expedited handling fee); and

(3) Submit a completed registration statement and proof of payment to RSPA before the expiration date of the temporary registration number.

§ 107.620 Recordkeeping requirements.

(a) Each person subject to the requirements of this subpart, or its agent designated under § 107.608(e), must maintain at its principal place of business for a period of three years from the date of issuance of each Certificate of Registration:

(1) A copy of the registration statement filed with RSPA;

(2) A copy of the certified or cashier's check, money order, or a copy of the credit card billing statement showing payment for the person's registration and processing fee; and

(3) The Certificate of Registration issued to the registrant by RSPA.

(b) In addition to the requirements of paragraph (a) of this section, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board all transport vehicles used to transport hazardous materials or shipments of hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

(c) Each person subject to this subpart must furnish its Certificate of Registration (or a copy thereof) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of DOT upon request.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

5. In § 171.2, paragraphs (a) and (b) are revised to read as follows:

§ 171.2 General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter (including §§ 171.11, 171.12, and 176.11).

(b) No person may transport a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is handled and transported in accordance with this subchapter, or an exemption issued under subpart B of part 107 of this chapter.

* * * * *

Issued in Washington, DC, on July 6, 1992, under the authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

Note: This is an appendix to the preamble of the document and will not appear in the Code of the Federal Regulations.

Appendix to Preamble—Registration Statement Form

BILLING CODE 4910-60-M

Exempted from Paperwork Reduction Act by 49 App. U.S.C. 1805(c)(13)

U.S. DEPARTMENT OF TRANSPORTATION
HAZARDOUS MATERIALS REGISTRATION STATEMENT
REGISTRATION YEAR 19___ - 19___

___ Initial Registration ___ Renewal of Registration ___ Amendment to Registration

Current Registration No.: _ _ _ _ _ _ _ _ _ _ _ _

REQUIREMENTS: THE SUBMISSION OF THIS FORM AND THE PAYMENT OF ATTENDANT FEES IS REQUIRED BY THE HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 APP. U.S.C. 1805(C) AND 1815(H), AND BY THE CODE OF FEDERAL REGULATIONS (CFR), TITLE 49, PART 107, SUBPART G. FAILURE TO COMPLY WITH THE REGISTRATION REQUIREMENTS CONTAINED THEREIN MAY RESULT IN CIVIL OR CRIMINAL PENALTIES. ANY PERSON, AS DEFINED BY 49 APP. U.S.C. 1802, WHO, BETWEEN JULY 1 AND JUNE 30 OF THE FOLLOWING YEAR, ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES MUST SUBMIT THIS REGISTRATION STATEMENT AND THE COMBINED REGISTRATION AND PROCESSING FEE INDICATED IN ITEM 4:

A) OFFERS OR TRANSPORTS IN COMMERCE ANY HIGHWAY ROUTE-CONTROLLED QUANTITY OF A CLASS 7 (RADIOACTIVE) MATERIAL, AS DEFINED IN 49 CFR 173.403;
B) OFFERS OR TRANSPORTS IN COMMERCE MORE THAN 25 KILOGRAMS (55 POUNDS) OF A DIVISION 1.1, 1.2, OR 1.3 (EXPLOSIVE) MATERIAL (SEE 49 CFR 173.50) IN A MOTOR VEHICLE, RAIL CAR, OR FREIGHT CONTAINER;
C) OFFERS OR TRANSPORTS IN COMMERCE MORE THAN ONE LITER (1.06 QUARTS) PER PACKAGE OF A MATERIAL EXTREMELY TOXIC BY INHALATION (DIVISION 2.3, HAZARD ZONE A, OR DIVISION 6.1, PACKING GROUP I, HAZARD ZONE A) (SEE 49 CFR 173.115 AND 173.132);
D) OFFERS OR TRANSPORTS IN COMMERCE A HAZARDOUS MATERIAL IN A BULK PACKAGING, CONTAINER, OR TANK HAVING A CAPACITY EQUAL TO OR GREATER THAN 13,248 LITERS (3,500 GALLONS) OR MORE THAN 13.24 CUBIC METERS (468 CUBIC FEET); OR
E) OFFERS OR TRANSPORTS IN COMMERCE A SHIPMENT OF 2,170 KILOGRAMS (5,000 POUNDS) GROSS WEIGHT OR MORE OF A CLASS OF A HAZARDOUS MATERIAL OR HAZARDOUS MATERIALS FOR WHICH PLACARDING OF A VEHICLE, RAIL CAR, OR FREIGHT CONTAINER IS REQUIRED.

1. **Registrant's Name** _____

2. **Principal Place of Business**

Street Address _____ City _____

County _____ State _ _ Zip Code _ _ _ _ _ - _ _ _ _ Country _____

3. **Registrant's US DOT ID Number or Reporting Railroad Alphabetic Code (if applicable)** _____

4. **Annual Registration Fee.** The combined registration and processing fee is $300.00.

Total Amount Enclosed: _____

Make check or money order in U.S. funds, drawn on a U.S. bank, and payable to "U.S. Department of Transportation." Payment is non-refundable.

Method of Payment

___ Cashier's Check ___ Certified Check ___ Money Order

___ Credit Card: ___ VISA ___ MasterCard

Card Number: | | | | | | | | | | | | | | | | Expiration Date: | | | | |

Name as it appears on the card _____

Authorized Signature _____

Cardholder acknowledges ordering goods or services in the amount of the Total shown hereon and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer. Credit card statement will list this payment as "US DOT Hazmat Regis."

5. **PRIOR-YEAR SURVEY INFORMATION: Hazardous Materials Activities, and States in Which Business was Transacted.** Mark each hazardous materials activity the registrant engaged in during the calendar year preceding the beginning date of the registration year. For each marked activity, also mark each capacity (shipper and/or carrier) in which the registrant served. Also circle the 2-letter state abbreviation for every state in which the registrant engaged in any of these activities. Circling "48 Contiguous States" indicates that business was conducted in all 48 contiguous states. A list of states and their abbreviations is given at the end of this section.

___ A. Offered or transported in commerce any highway route-controlled quantity of a Class 7 (radioactive) material.
___ 1. Shipper ___ 2. Carrier

AL	AR	AZ	CA	CO	CT	DE	FL	GA	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME	MI	MN
MO	MS	MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
	VT	VA	WA	WV	WI	WY	48 CONTIGUOUS STATES					AK	AS	DC	GU	HI	MP	PR	VI	

Form DOT F 5800.2 (5/92)

___ B. Offered or transported in commerce more than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container.

___ 1. Shipper ___ 2. Carrier

AL	AR	AZ	CA	CO	CT	DE	FL	GA	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME	MI	MN
MO	MS	MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
	VT	VA	WA	WV	WI	WY	48 CONTIGUOUS STATES					AK	AS	DC	GU	HI	MP	PR	VI	

___ C. Offered or transported in commerce more than 1 liter (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A).

___ 1. Shipper ___ 2. Carrier

AL	AR	AZ	CA	CO	CT	DE	FL	GA	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME	MI	MN
MO	MS	MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
	VT	VA	WA	WV	WI	WY	48 CONTIGUOUS STATES					AK	AS	DC	GU	HI	MP	PR	VI	

___ D. Offered or transported in commerce a hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet).

___ 1. Shipper ___ 2. Carrier

AL	AR	AZ	CA	CO	CT	DE	FL	GA	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME	MI	MN
MO	MS	MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
	VT	VA	WA	WV	WI	WY	48 CONTIGUOUS STATES					AK	AS	DC	GU	HI	MP	PR	VI	

___ E. Offered or transported in commerce a shipment of 2,170 kilograms (5,000 pounds) gross weight or more of a class of a hazardous material or hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

___ 1. Shipper ___ 2. Carrier

AL	AR	AZ	CA	CO	CT	DE	FL	GA	ID	IL	IN	IA	KS	KY	LA	MA	MD	ME	MI	MN
MO	MS	MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
	VT	VA	WA	WV	WI	WY	48 CONTIGUOUS STATES					AK	AS	DC	GU	HI	MP	PR	VI	

___ F. Did not engage in any of the activities listed in A through E during the applicable calendar year.

TWO-LETTER STATE ABBREVIATIONS

Alabama	AL	Georgia	GA	Maryland	MD	New York	NY	South Dakota	SD
Alaska	AK	Guam	GU	Massachusetts	MA	North Carolina	NC	Tennessee	TN
American Samoa	AS	Hawaii	HI	Michigan	MI	North Dakota	ND	Texas	TX
Arizona	AZ	Idaho	ID	Minnesota	MN	N. Mariana Is.	MP	Utah	UT
Arkansas	AR	Illinois	IL	Mississippi	MS	Ohio	OH	Vermont	VT
California	CA	Indiana	IN	Missouri	MO	Oklahoma	OK	Virgin Islands	VI
Colorado	CO	Iowa	IA	Montana	MT	Oregon	OR	Virginia	VA
Connecticut	CT	Kansas	KS	Nebraska	NE	Pennsylvania	PA	Washington	WA
Delaware	DE	Kentucky	KY	Nevada	NV	Puerto Rico	PR	West Virginia	WV
Dist. Columbia	DC	Louisiana	LA	New Hampshire	NH	Rhode Island	RI	Wisconsin	WI
Florida	FL	Maine	ME	New Jersey	NJ	South Carolina	SC	Wyoming	WY
				New Mexico	NM				

6. Certification of Information. I certify that, to the best of my knowledge, the above information is true, accurate, and complete.

Signature _____ Date _____

Name _____ Phone (_ _ _) _ _ _ - _ _ _ _

Title _____

FALSE STATEMENTS MAY VIOLATE 18 U.S.C. 1001.

Mail completed form to:
U.S. Department of Transportation
Hazardous Materials Registration
P.O. Box 740188
Atlanta, GA 30374-0188

[FR Doc. 92-16104 Filed 7-8-92 8:45 am]
BILLING CODE 4910-60-C

Reader Aids

Federal Register

Vol. 57, No. 132

Thursday, July 9, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....30101

3 CFR

Executive Orders:
12543 (See rule of June 29).....29424
12544 (See rule of June 29).....29424
12803 (See Notice of June 18).....28867
Proclamations:
6452.....29429
6453.....29625
6454.....29629
6455.....30069
6456.....30097
Administrative Orders:
Presidential Determinations:
No. 92-34 of June 22, 1992.....30099

5 CFR

532.....29783
831.....29783
843.....29783
870.....29783

7 CFR

946.....30379
948.....30380
980.....30380
981.....30382
1205.....29181, 29431
1220.....29436
Proposed Rules:
12.....29658
51.....29449
55.....29660
56.....29660
59.....29660
70.....29660
400.....30430

8 CFR

214.....29193
251.....29193
258.....29193

9 CFR

96.....29784
98.....29193
Proposed Rules:
51.....29225
160.....30432
161.....30432
162.....30432

10 CFR

50.....30383
Proposed Rules:
605.....30171

12 CFR

225.....30387
Proposed Rules:
6.....29808
19.....29808
208.....29226
263.....29226
308.....29662
325.....29662
333.....30433
362.....30435
565.....29826

13 CFR

101.....30391

14 CFR

39.....29194-29201, 29785, 30111, 30113, 30392-30534
71.....30115
97.....29442, 29443
Proposed Rules:
39.....29450-29453, 29681-29684, 29785, 30173, 30176
71.....29454, 29455, 29686, 29687, 30178, 30179

15 CFR

6.....30115

17 CFR

140.....29203
145.....29203
Proposed Rules:
229.....29582
240.....29564, 29582
249.....29564

18 CFR

157.....29631

19 CFR

4.....29633, 29634

20 CFR

404.....30116
655.....29203
Proposed Rules:
416.....29244

21 CFR

2.....29353
5.....29353
10.....29353
310.....29353
314.....29353
320.....29353
443.....29353
807.....29354
Proposed Rules:
356.....30534

23 CFR

Proposed Rules:
650.....29689

24 CFR

201.....30394

25 CFR

Proposed Rules:
515.....30346, 30353
519.....30346
522.....30346
523.....30346
524.....30346
556.....30346
558.....30346
571.....30384
573.....30384
575.....30384
577.....30384

26 CFR

Proposed Rules:
1.....29246, 29851, 30451
301.....29248

27 CFR

47.....29787
179.....29787

Proposed Rules:
4.....29456
20.....29763

28 CFR

0.....30395
44.....30397

29 CFR

507.....29203
1425.....30397
1910.....29204–29206

30 CFR

946.....29788
950.....30121

Proposed Rules:
48.....29853
75.....29853
77.....29853

31 CFR

550.....29424

32 CFR

165.....29619
169a.....29206

Proposed Rules:
165.....29618

33 CFR

81.....29218
100.....30403
117.....30403
155.....29354
165.....30405

Proposed Rules:
117.....30451
168.....30058

34 CFR

74.....30328
75.....30328
76.....30328
77.....30328
237.....30328
263.....30328
300.....30328
356.....30328
562.....30328
630.....30328
653.....30328
654.....30328
762.....30328

36 CFR

7.....29794
327.....29218

37 CFR

1.....29634
2.....29634
3.....29634

Proposed Rules:
1.....29248
10.....29248

38 CFR

21.....29798

40 CFR

60.....29649
61.....29649
86.....30054
180.....30132
261.....29220
271.....29446

Proposed Rules:
72.....29940
73.....29940
180.....30132, 30454
300.....30452

41 CFR

101–45.....29804

42 CFR

60.....30534

Proposed Rules:
412.....30301
413.....30301

43 CFR

3200.....29650
4700.....29651

44 CFR

Proposed Rules:
206.....29854
362.....30455

45 CFR

201.....30407
204.....30407
205.....30132, 30407
206.....30132
232.....30132, 30407
233.....30132, 30407
234.....30132
237.....30132
301.....30407
303.....29763
1355.....30407

46 CFR

Proposed Rules:
586.....29259, 30182

47 CFR

73.....29654, 29655, 29805, 29806

Proposed Rules:
22.....29260, 30189
73.....29691, 29805, 29806
97.....30456

48 CFR

Ch. 20.....29220

Proposed Rules:
228.....29269
232.....29269
252.....29269

49 CFR

107.....30620
171.....30620
214.....29561, 30429
245.....30596
571.....30161

Proposed Rules:
71.....29270
396.....29457
552.....29459
571.....30189

50 CFR

17.....30164
285.....29655
630.....29447
658.....29447
672.....29222, 29223, 29806, 30168
675.....29223, 29656, 29806, 29807

Proposed Rules:
14.....30457
16.....29856
17.....30191
217.....30196
227.....30196
611.....29692, 29856
603.....30458
663.....30534
678.....29859
685.....29692

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 8, 1992

Public Laws

102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

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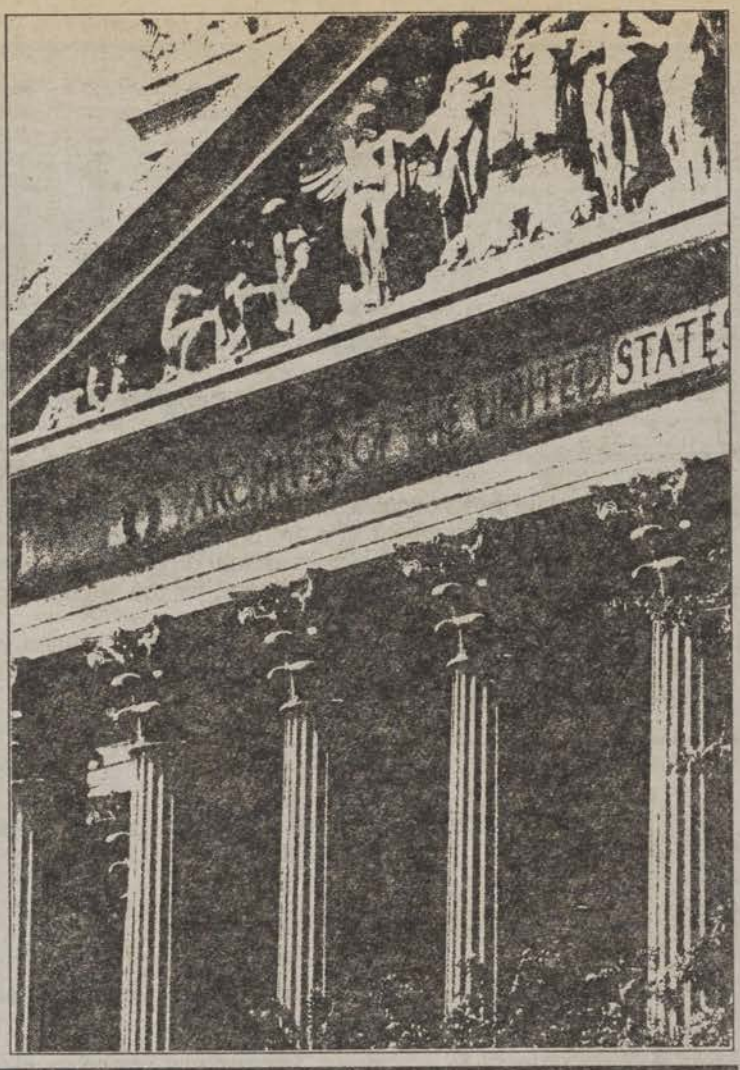

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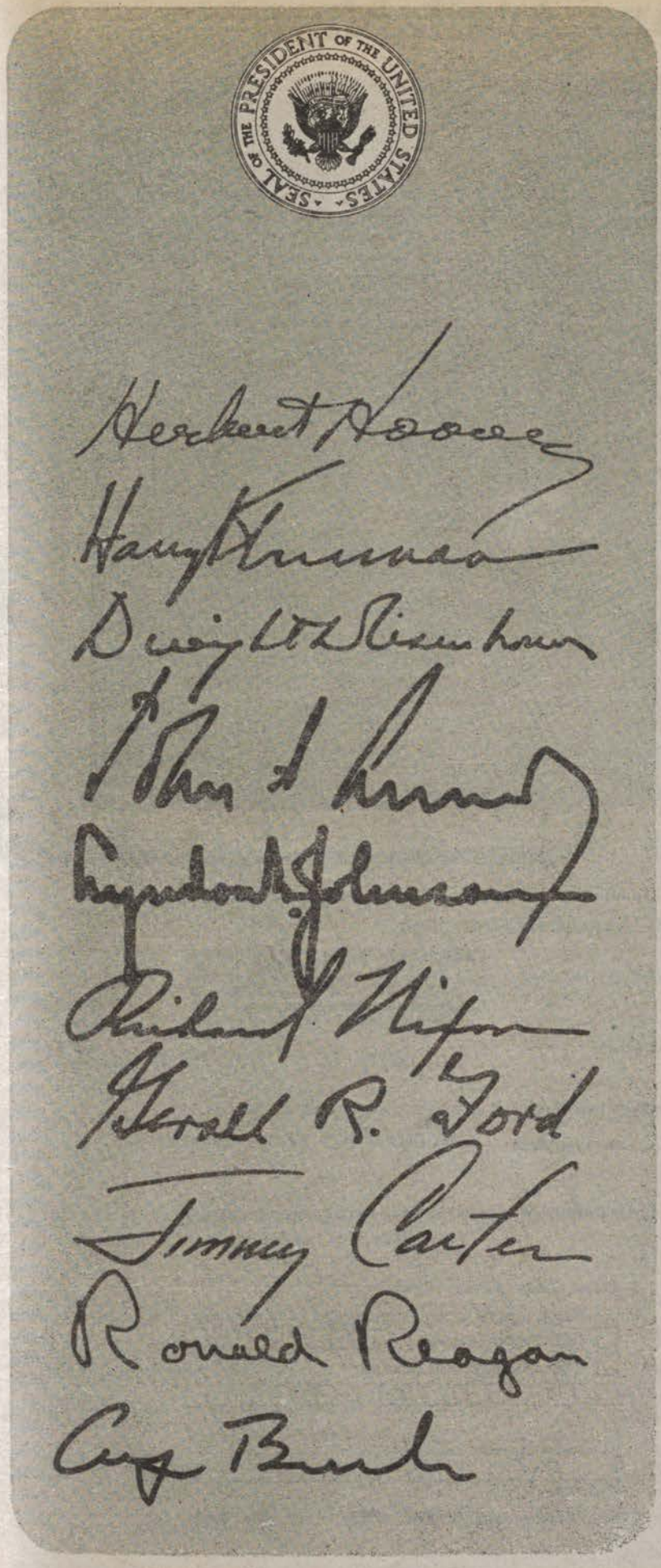

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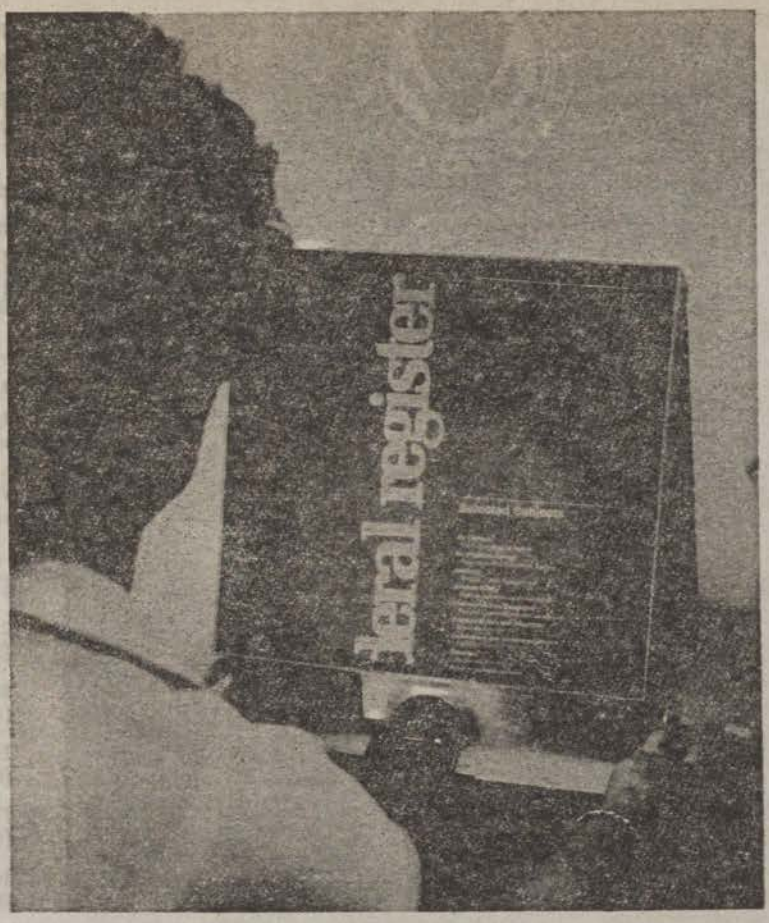

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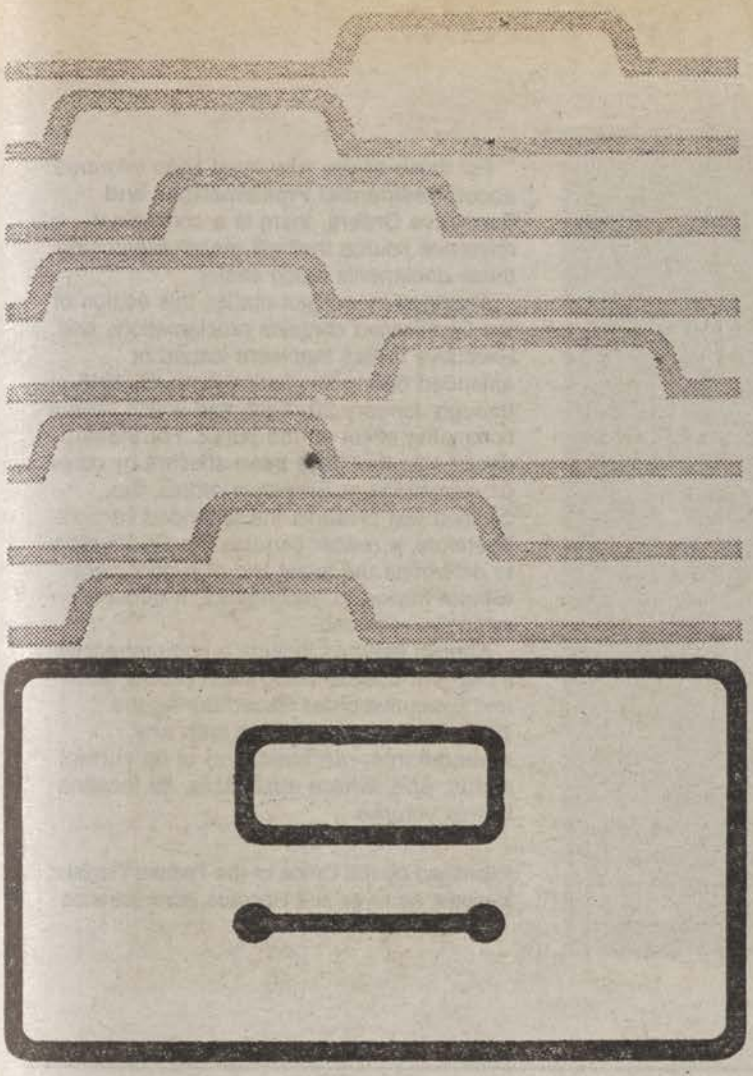

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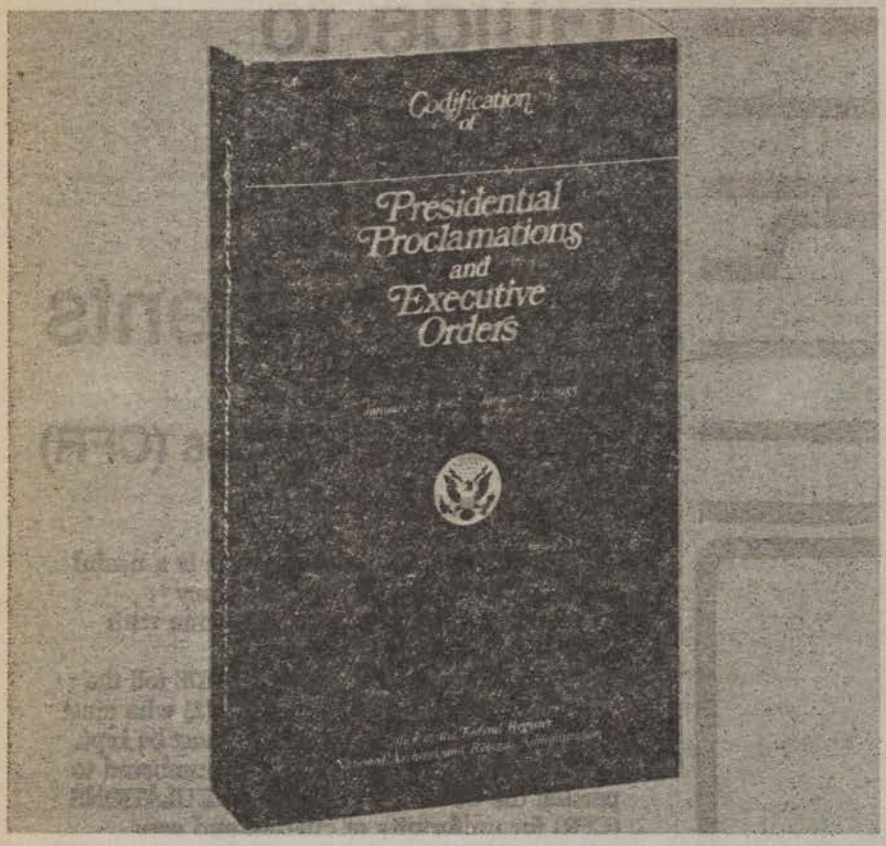

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